

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1199

ORIGINAL

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

-against-

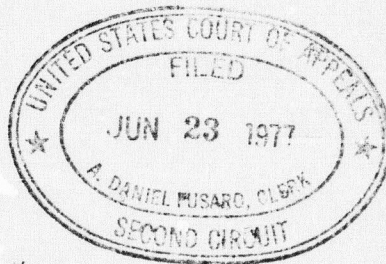
ISHMAEL SUAREZ-TORREZ, a/k/a "Eddie",

Defendant-Appellant.

*From a Judgment of Conviction of the United States District
Court for the Southern District of New York*

APPENDIX

MARTIN E. GOTKIN
Attorney for Defendant-Appellant
250 West 57th Street
New York, New York 10019
(212) 541-8390



10833

LUTZ APPELLATE PRINTERS, INC.

Law and Financial Printing

South River, N.J. New York, N.Y. Philadelphia, Pa. Washington, D.C.
(201) 257-6850 (212) 840-9494 (215) 563-5587 (202) 783-7288

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Docket Entries	1a
Indictment (Filed November 10,1976)	3a
Charge to Jury	23a
Judgment (Filed March 28, 1977)	101a
Minutes of Hearing of January 27, 1977 . . .	102a
Government Exhibit 8(b) Transcript of Body Recording of September 27,1976 . .	125a
Government Exhibit 7(b) Transcript of Phone Recording of September 27, 1976 .	130a
Excerpts from Trial Transcript	133a

V. EXCLUDABLE DELAY

Intervenor Date Filed Date Case Total Days

(a) (b) (c) (d)

Ismael Suarez Torres request for voir dire.

Examination of Prospective Jurors.

Filed CJA 28 Copy 2 Approving payment to Manuel Ras 1832XX
163-07 21st Avenue, Whitestone, NY 11357 as counsel
for dft. dt. 3-31-77... Wyatt J.

Filed CJA 21 Copy 3 Appointing counsel for dft.
Manuel Ras 163-07 21st Avenue, Whitestone, NY 11357.
dt. 3-31-77... Wyatt J.

Jury trial begun as to Ismael Suarez-Torres (Atty. Martin Gotkin)
ABSA - Richard Weinberg.Wyatt J.

Jury Trial Cont'd... Wyatt J.

" " " Wyatt J.

" " " Dft. Suarez Torres - Ct. 9 Dismissed by Court.
" " " Wyatt J.

Jury trial cont'd & concluded. Jury deliberations begin....
" " " Wyatt J.

Jury Deliberations cont'd & concluded. Jury verdict as follows:
Ismael Suarez Torres - Guilty on Cts. 1, 2, 4, 6 & in excess of
\$100.00. Sent, date adj. to 3/25/77 at 4 P.M. in Rm. 706 as to
both dfts. & bail is cont'd on Both dfts. P.S.I. Ordered.....
" " " Wyatt J.

Filed Request to charge of Dft. Ismael Suarez Torres.

Filed Govt. Request to Charge.

Filed Dfts. Notice of Appeal from Judgment entered 3/28/77.
(mailed notice)

Filed Govts. Sentencing Memorandum.

Filed Judgment & Commitment (Atty. Martin Gotkin Present) The
dft. is hereby committed to the custody of the atty. gen. or
his authorized representative for imprisonment for a period
of THREE (3) MONTHS on each of Counts 1, 2, 4, 6 to run
concurrently with each other. The Dft. is to surrender on
March 31, 1977 @ 10:30 A.M. in Room 506 (Part I). The Dfts.
present bail of \$2,000 PER is continued until the date of
surrender..... Wyatt J.
Issued Commitment 3-30-77

Filed True Copy of J&C with marshals ret. Dft. Delivered to
Warden, MCC, NY on 3-31-77.

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

A TRUE COPY

RAYMOND F. BURCHARDT, Clerk

By *[Signature]*

Deputy Clerk

RW:slc
11-174

INDICTMENT
(Filed November 10, 1976)

3a

UNITED STATES DISTRICT COURT (pp. 3a-22a)
SOUTHERN DISTRICT OF NEW YORK

-x- 26 CRIM. 1045

UNITED STATES OF AMERICA :

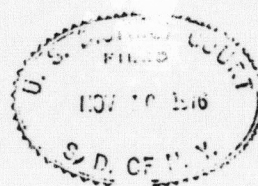
- v - :

INDICTMENT

76 Cr.

ANDRES COLLAZO, :
JOSE LOBRIEL, a/k/a "Chegui", :
JOSEPH RIVERA, :
JOSE ROSADO, :
FRANK CUEVAS, a/k/a "Frankie", :
AIDA RODRIGUEZ, a/k/a "Lucy", :
MODESTA DIAZ, :
ISHMAEL SUAREZ TORREZ, a/k/a :
"Eddie", :
CARLOS FERNANDEZ, :
JOSEPH COMACHO, :
HECTOR PEREZ, and :
JUSTA COLLAZO, :

Defendants. :



-x-

The Grand Jury charges:

COUNT ONE

INTRODUCTION

1. In 1964 Congress enacted "The Food Stamp Act of 1964". Congress found that the nation's abundance of food should be utilized to raise the level of nutrition among low-income households, and that the limited food purchasing power of these households contributes to hunger and malnutrition among members of these households. In order to alleviate this hunger and malnutrition, a food stamp program was enacted which would permit low-income households to purchase a nutritionally adequate diet through normal channels of trade.

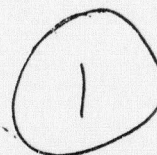
2. Under the food stamp program households whose income and other financial resources are substantial limiting factors in permitting them to purchase an adequate diet are deemed to be eligible households. These eligible households receive twice a month through the United States Postal Service an authorization-to-purchase ("ATP") card. This card shows the face value of food stamp coupons the household is entitled

MICROFILM

NOV 10 1976

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By [Signature]
Deputy Clerk



to receive upon presentation of the card and the amount to be 4a
paid by the household for the particular allotment of food
stamp coupons. These authorization to purchase cards are
issued to the eligible household by the state agency having
responsibility for the administration of the federally aided
public assistance program. In New York City that agency is
the Department of Social Services. Pursuant to federal reg-
ulations, Title 7, Code of Federal Regulations, Section
270.2(e) the authorization to purchase card can be used only
by eligible households in order to receive food stamp coupons.

3. A member of an eligible household may present
the authorization to purchase card to a bank, checking cashing
establishment, or other business institution authorized to
redeem the authorization to purchase card. The bank, check
cashing establishment or other business institution will give
the holder of the authorization to purchase card the allotment
of food stamp coupons designated on the card.

4. A member of an eligible family may use the
food stamp coupons to purchase food by presenting as payment
for food the food stamp coupon to a retail food store auth-
orized by the Food and Nutrition Service of the United States
Department of Agriculture to participate in the food stamp
program. Pursuant to applicable regulation, Title 7, Code
of Federal Regulations, Section 272.2(b) coupons may "be
accepted by an authorized retail food store or meal service
only in exchange for eligible food." The authorized retail
food store must stamp or otherwise indicate its Department
of Agriculture authorization number or the name of the re-
tail foodstore on each food stamp coupon received from a
member of an eligible household as payment for food.

5. The authorized retail food store is provided
by the Food and Nutrition Service of the Department of Agri-
culture with redemption certificates which are to be used by

the retail food store in presenting the food stamp coupons to a commercial bank for credit or cash. Pursuant to regulation banks may accept food stamp coupons properly endorsed and accompanied by a redemption certificate from authorized retail food stores. The bank may credit to the account of the authorized retail food store the value of food stamp coupons deposited by the authorized retail food store. The bank then sends the food stamp coupons through normal banking channels for payment by the United States Government.

CO-CONSPIRATORS

6. At all times relevant to this Indictment, the defendant JOSEPH RIVERA operated Cosmos Fruit and Vegetable, 999 Ogden Avenue, Bronx, New York.

7. At all time relevant to this Indictment, the defendant ANDRES COLLAZO operated Collazo's Grocery Store, 1138 Findlay Avenue, Bronx, New York.

8. At all times relevant to this Indictment, the defendant JOSE ROSADO owned and operated Rosado Country Fresh Eggs, 814 East 182nd Street, Bronx, New York which is authorized to accept food stamps from consumers, and redeem these food stamps with the Department of Agriculture.

9. At all times relevant to this Indictment, the defendant JOSE LOBRIEL, a/k/a "Chegui", was manager of El Pilon Restaurant, 760 East Tremont Avenue, Bronx, New York.

10. At all times relevant to this Indictment, the defendant FRANK CUEVAS, a/k/a "Frankie", operated a cake business.

11. At all times relevant to this Indictment, the defendant AIDA RODRIGUEZ, a/k/a "Lucy" was employed with the United States Postal Service, Manahattanville Station, New York, New York 10027.

12. At all times relevant to this Indictment, the defendant MODESTA DIAZ owned four check cashing establish-

ments including one at 723 Burke Avenue, Bronx, New York and one at 3796 Broadway, New York, New York. These check cashing establishments are authorized to accept authorization to purchase cards from eligible households, and to furnish the eligible households with the food stamp coupons referred to on the authorization to purchase card.

13. At all times relevant to this Indictment, the defendant ISAHMAEL SUAREZ TORREZ, a/k/a "Eddie" worked at the check cashing establishment owned by the defendant MODESTA DIAZ at 723 Burke Avenue, Bronx, New York.

14. At all times relevant to this Indictment, the defendant CARLOS FERNANDEZ owned a check cashing establishment at 57 Pitt Street, New York, New York. This check cashing establishment was authorized to accept authorization to purchase cards from eligible households and to furnish the eligible households with the food stamp coupons referred to on the authorization to purchase card.

15. At all times relevant to this Indictment, the defendant JOSEPH COMACHO was the manager of a check cashing establishment at 167th Street and River Avenue, Bronx, New York. This check cashing establishment is authorized to accept authorization to purchase cards from eligible households and to furnish the eligible households with the food stamp coupons referred to on the authorization to purchase card.

16. At all times relevant to this Indictment, the defendant HECTOR PEREZ was employed at the check cashing establishment at 3796 Broadway, New York, New York owned by MODESTA DIAZ.

17. At all times relevant to this Indictment, the defendant JUSTA COLLAZO was the wife of defendant ANDRES COLLAZO and helped to operate Collazo's Grocery Store.

THE CONSPIRACY

7a

The Grand Jury further charges:

18. From on or about June 1, 1975, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, ANDRES COLLAZO, JOSEPH RIVERA, JOSE ROSADO, JOSE LOBRIEL, a/k/a "Chegui", FRANK CUEVAS, AIDA RODRIGUEZ, a/k/a "Lucy", MODESTA DIAZ, ISHMAEL SUAREZ TORREZ, a/k/a "Eddie", CARLOS FERNANDEZ, JOSEPH COMACHO, HECTOR PEREZ, and JUSTA COLLAZO, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with other persons to the Grand Jury known and unknown, to defraud the United States and the United States Department of Agriculture and to commit offenses against the United States, that is to violate Title 7, United States Code, Section 2023(b), and Title 18, United States Code, Sections 641, 287, 1001, 1708 and 1709.

OBJECTS OF THE CONSPIRACY

19. It was an object of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly would and did use, transfer, acquire, alter and possess food stamp coupons and authorization to purchase cards in a manner not authorized by law, namely by Title 7, United States Code, Chapter 51, and regulations issued pursuant to said chapter.

20. It was a further part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly would and did defraud the United States, and the United States Department of Agriculture Food Stamp Program.

21. It was a further part of said conspiracy that the defendants and their co-conspirators would and did steal, take, embezzle, and abstract, and by fraud and deception obtain and attempt to obtain, from and out of the mail, post

office, postal station, letter box, mail receptacle, and from a mail route and other authorized depository for mail matter, and from a letter and mail carrier, letters and packages and mail containing authorization to purchase cards, and would abstract, remove and embezzle from such letters, packages, and mail the said authorization to purchase cards.

22. It was a further part of said conspiracy that the defendants and their co-conspirators unlawfully, willfully, and knowingly would and did make and present to a department and agency of the United States, namely the United States Department of Agriculture, claims upon and against the United States, and said department and agency of the United States, knowing such claims to be false, fictitious, and fraudulent.

23. It was a further part of said conspiracy that the defendants and their co-conspirators unlawfully, willfully and knowingly would and did embezzle, steal, purloin and convert to their use and the use of others, and without authority sell, convey, and dispose of records, vouchers, moneys, and things of value of the United States and the United States Department of Agriculture, and property made and being made under contract for the United States and the United States Department of Agriculture, said records, vouchers, moneys, property, and things of value in excess of \$100.

24. It was further a part of said conspiracy that the defendants and their co-conspirators unlawfully, willfully and knowingly would and did make false, fictitious and fraudulent statements and representations, and make and use false writings and documents knowing the same to contain false, fictitious, and fraudulent statements and entries in a matter within the jurisdiction of a department and agency of the United States, namely, the United States Department of Agriculture.

MEANS OF THE CONSPIRACY

9a

25. Among the means by which the defendants and their co-conspirators would and did carry out the conspiracy were the following:

(a) The defendants ANDRES COLLAZO, JOSEPH RIVERA, JUSTA COLLAZO, AIDA RODRIGUEZ, a/k/a "Lucy", JOSE LOBRIEL, a/k/a "Chegui", and FRANK CUEVAS would and did obtain stolen and converted authorization to purchase cards ("ATPs") from the mails and elsewhere, and stolen and converted food stamp coupons.

(b) The defendant FRANK CUEVAS, a/k/a "Frankie" would and did give authorization to purchase cards to the defendant JOSEPH RIVERA.

(c) The defendants, JOSEPH RIVERA, ANDRES COLLAZO, JOSE LOBRIEL, a/k/a "Chegui", AIDA RODRIGUEZ, a/k/a "Lucy", and JUSTA COLLAZO would and did give authorization to purchase cards and food stamp coupons to the defendant, JOSE ROSADO, for disposition by JOSE ROSADO with payment to them after disposition.

(d) The defendant JOSE ROSADO would and did transfer said authorization to purchase cards to the defendants MODESTA DIAZ, JOSEPH COMACHO, CARLOS FERNANDEZ, HECTOR PEREZ, and ISHMAEL SUAREZ TORREZ, a/k/a "Eddie".

(e) The defendants MODESTA DIAZ, JOSEPH COMACHO, CARLOS FERNANDEZ, HECTOR PEREZ, and ISHMAEL SUAREZ TORREZ, a/k/a "Eddie" would and did give to the defendant JOSE ROSADO food stamp coupons in return for the authorization to purchase cards.

(f) The defendants MODESTA DIAZ, JOSEPH COMACHO, CARLOS FERNANDEZ, HECTOR PEREZ, and ISHMAEL SUAREZ TORREZ, a/k/a "Eddie" would and did obtain food stamp coupons issued by the Department of Agriculture.

(g) The defendant JOSE ROSADO would and did deposit said food stamp coupons received from the defendants MODESTA DIAZ, JOSEPH COMACHO, CARLOS FERNANDEZ, HECTOR PEREZ, and ISHMAEL SUAREZ TORREZ, a/k/a "Eddie" in his bank account, and the bank would credit the defendant JOSE ROSADO's bank account for the cash value of said food stamp coupons. From approximately October 1975 through August 1976 the defendant JOSE ROSADO redeemed approximately \$2.1 million dollars in food stamp coupons.

(h) The defendant JOSE ROSADO would and did withdraw money from his bank account, and distribute said money among the defendants JOSEPH RIVERA, JOSE LOBRIEL, a/k/a "Chegui", ANDRES COLLAZO, JUSTA COLLAZO, AIDA RODRIGUEZ, a/k/a "Lucy", MODESTA DIAZ, JOSEPH COMACHO, ISHMAEL SUAREZ TORREZ, a/k/a "Eddie", CARLOS FERNANDEZ, and HECTOR PEREZ.

(i) The defendant JOSEPH RIVERA would and did distribute said money to the defendants FRANK CUEVAS, a/k/a "Frankie" and JOSE LOBRIEL, a/k/a "Chegui".

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof the defendants and their co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

1. On approximately June 15, 1976 the defendant JOSE ROSADO received authorization to purchase cards from the defendants ANDRES COLLAZO and JOSEPH RIVERA.
2. On approximately June 16, 1976 the defendant JOSE ROSADO gave to the defendants HECTOR PEREZ, and ISHMAEL SUAREZ TORREZ, a/k/a "Eddie" authorization to purchase cards.
3. On approximately June 16, 1976 the defendants HECTOR PEREZ, and ISHMAEL SUAREZ TORREZ, a/k/a "Eddie", gave to the defendant JOSE ROSADO food stamp coupons.
4. On approximately June 18, 1976 the defendant JOSE ROSADO deposited \$17,803 in food stamp coupons in his bank account.

5. On approximately June 18, 1976 the defendant JOSE ROSADO withdrew approximately \$20,094.76 from his bank account.

6. On approximately June 18, 1976 the defendant JOSE ROSADO paid money to the defendants ANDRES COLLAZO, JOSEPH RIVERA, MODESTA DIAZ, HECTOR PEREZ, and ISHMAEL SUAREZ TORREZ, a/k/a "Eddie".

7. On approximately June 1, 1976 the defendant MODESTA DIAZ introduced the defendant JOSE ROSADO to the defendants JOSEPH COMACHO and CARLOS FERNANDEZ.

8. On approximately September 9, 1976 the defendant JOSE ROSADO met with the defendant CARLOS FERNANDEZ.

9. On approximately September 15, 1976 the defendant JOSE ROSADO gave to the defendant JOSEPH RIVERA approximately \$1500, as payment for authorization to purchase cards.

10. On approximately September 15, 1976 the defendant JOSE ROSADO gave to the defendant ANDRES COLLAZO approximately \$9000 for authorization to purchase cards and food stamp coupons the defendant ANDRES COLLAZO had given to the defendant JOSE ROSADO.

11. On approximately September 16, 1976 the defendant AIDA RODRIGUEZ gave to the defendant JOSE ROSADO approximately 441 authorization to purchase cards and the defendant JOSE ROSADO gave to the defendant AIDA RODRIGUEZ approximately \$2500.

12. On approximately September 17, 1976 the defendant JOSEPH RIVERA gave to the defendant JOSE ROSADO approximately 746 authorization to purchase cards.

13. On approximately September 20, 1976 the defendant JOSE ROSADO gave to the defendant ISHMAEL SUAREZ TORREZ, a/k/a "Eddie" approximately 422 authorization to purchase cards at 723 Burke Avenue, Bronx, New York.

14. On approximately September 20, 1976 the defendant HECTOR PEREZ received approximately 738 authorization to purchase cards from the defendant JOSE ROSADO at 3796 Broadway, New York, New York.

15. On approximately September 20, 1976 the defendant JOSE ROSADO gave to the defendant JOSEPH RIVERA approximately \$2500 and the defendant JOSEPH RIVERA gave to the defendant JOSE ROSADO approximately \$11,036 worth of authorization to purchase cards at 999 Ogden Avenue, Bronx, New York.

16. On approximately September 21, 1976 the defendant JUSTA COLLAZO gave to the defendant JOSE ROSADO approximately 200 authorization to purchase cards and \$21,820 in food stamp coupons.

17. On approximately September 22, 1976 the defendant JOSE ROSADO gave to the defendant JOSEPH RIVERA approximately \$2500, and the defendant JOSEPH RIVERA gave to the defendant JOSE ROSADO approximately 107 authorization to purchase cards.

18. On approximately September 22, 1976 the defendant JOSE ROSADO telephoned the defendant CARLOS FERNANDEZ to discuss the defendant CARLOS FERNANDEZ redeeming authorization to purchase cards for the defendant JOSE ROSADO.

19. On approximately September 22, 1976 the defendant CARLOS FERNANDEZ gave to the defendant JOSE ROSADO approximately \$16,854 in food stamp coupons and the defendant JOSE ROSADO gave to the defendant CARLOS FERNANDEZ approximately \$10,000 in cash and 254 authorization to purchase cards at 57 Pitt Street, New York, New York.

20. On approximately September 24, 1976 the defendant JOSE ROSADO telephoned the defendant MODESTA DIAZ.

21. On approximately September 24, 1976 the defendant JOSE ROSADO gave to the defendant JOSEPH RIVERA approximately \$871, and the defendant JOSEPH RIVERA gave

to the defendant JOSE ROSADO approximately 36 authorization to purchase cards.

22. On approximately September 24, 1976 the defendant HECTOR PEREZ gave to the defendant JOSE ROSADO approximately \$27,000 in food stamp coupons at 3796 Broadway, New York, New York.

23. On approximately September 24, 1976 the defendant JOSE ROSADO gave to the defendant JOSEPH COMACHO approximately 200 authorization to purchase cards at approximately 167th Street and Jerome Avenue, Bronx, New York.

24. On approximately September 24, 1976 the defendant JOSE ROSADO gave to the defendant ANDRES COLLAZO approximately \$7500 for food stamp coupons and authorization to purchase cards.

25. On approximately September 27, 1976 the defendant ISHMAEL SUAREZ TORREZ, a/k/a "Eddie" had a telephone conversation with the defendant JOSE ROSADO.

26. On approximately September 27, 1976 the defendant ISHMAEL SUAREZ TORREZ, a/k/a "Eddie" gave to the defendant JOSE ROSADO approximately \$20,564 in food stamp coupons and the defendant JOSE ROSADO gave to the defendant ISHMAEL SUAREZ TORREZ approximately \$11,500 at 723 Burke Avenue, Bronx, New York.

27. On approximately September 27, 1976 the defendant JOSE ROSADO gave to the defendants ANDRES COLLAZO and JUSTA COLLAZO approximately \$7500.

28. On approximately September 27, 1976 the defendant JOSEPH COMACHO had a telephone conversation with the defendant JOSE ROSADO.

29. On approximately September 27, 1976 the defendant JOSEPH COMACHO gave to the defendant JOSE ROSADO approximately \$11,000 in food stamp coupons.

30. On approximately September 28, 1976 the defendant JOSE ROSADO met with the defendant JOSEPH RIVERA.

31. On approximately September 28, 1976 defendant JOSE ROSADO had a telephone conversation with the de-

defendant MODESTA DIAZ concerning the defendant JOSE ROSADO receiving food stamp coupons from the defendant MODESTA DIAZ and the defendant MODESTA DIAZ receiving money from the defendant JOSE ROSADO.

32. On approximately September 28, 1976 the defendant FRANK CUEVAS, a/k/a "Frankie" gave to the defendant JOSEPH RIVERA approximately 167 authorization to purchase cards and approximately \$5000.

33. On approximately September 29, 1976 the defendant MODESTA DIAZ gave to the defendant JOSE ROSADO approximately \$15,000 in food stamp coupons and the defendant JOSE ROSADO gave to the defendant MODESTA DIAZ approximately \$15,000.

34. On approximately October 23, 1976 the defendant JOSE LOBRIEL, a/k/a "Chegui" gave to the defendant JOSEPH RIVERA approximately 159 authorization to purchase cards and the defendant JOSEPH RIVERA gave to the defendant JOSE LOBRIEL, a/k/a "Chegui" approximately \$500.

35. On approximately October 21, 1976 the defendant FRANK CUEVAS, a/k/a "Frankie" had a telephone conversation with the defendant JOSEPH RIVERA in which they discussed the authorization to purchase cards the defendant FRANK CUEVAS had given to the defendant JOSEPH RIVERA.

(Title 18, United States Code, Section 371.)

COUNTS TWO AND THREE

The Grand Jury further charges:

INTRODUCTION

1. Title 7, United States Code, Section 2012(h) provides that the term "State agency" as used in the "Food Stamp Act of 1964" "means the agency of the State government which has responsibility for the administration of the federally aided public assistance programs." In the City of New York that agency is the Department of Social Services, Human Resources Administration.

2. Title 7, United States Code, Section 2012(m) provides that the term "authorization to purchase card" means any document issued by the State agency to an eligible household which shows the face value of the coupon allotment the household is entitled to be issued on presentment of such document and the amount to be paid by such household for such allotment.

3. Title 7, United States Code, Section 2012(c) provides that "the term 'coupon' means any coupon, stamp, or type of certificate issued pursuant to the provisions of this chapter."

4. Title 7, Code of Federal Regulations, Section 270.2(e) provides that "'ATP' means an authorization to purchase card which is issued by the State agency to an eligible household to show the face value of the coupon allotment the household is entitled to receive on presentation of such document and the amount to be paid by such household for such allotment."

5. Title 7, Code of Federal Regulations, Section 270.2(n) provides that "'coupon' means any coupon, stamp, or type of certificate issued pursuant to the provisions of this subchapter, for the purchase of eligible food."

6. Title 7, Code of Federal Regulations, Section 271.9(a) provides, in relevant part, that "'coupons may be used only by the head of the household or other persons selected by him to purchase eligible food for the household . . ."

7. Title 7, Code of Federal Regulations, Section 272.2(b) provides that "coupons shall be accepted by an authorized retail food store or meal service only in exchange for eligible food . . ."

COUNT TWO

8. From on or about the 1st day of June, 1975 up to and including the date of the filing of this Indictment, in the Southern District of New York, the defendants ANDRES

COLLAZO, JOSEPH RIVERA, JOSE LOBRIEL, a/k/a "Chegui", JOSE ROSADO, FRANK CUEVAS, a/k/a "Frankie", MODESTA DIAZ, ISHMAEL SUAREZ TORREZ, a/k/a "Eddie", HECTOR PEREZ, and JUSTA COLLZAO unlawfully, wilfully and knowingly did use, transfer, acquire, alter and possess coupons and authorization to purchase cards in a manner not authorized by Title 7, United States Code, Chapter 51 and the regulations issued pursuant to said Chapter, said coupons and authorization to purchase cards having a value in excess of \$100, in that the defendants ANDRES COLLAZO, JOSEPH RIVERA, JOSE LOBRIEL, a/k/a "Chegui", JOSE ROSADO, FRANK CUEVAS, a/k/a "Frankie", MODESTA DIAZ, ISHMAEL SUAREZ TORREZ, a/k/a "Eddie", HECTOR PEREZ, and JUSTA COLLAZO, did use, transfer, acquire, alter and possess coupons and authorization to purchase cards in a manner inconsistent with paragraphs two through seven of the Introduction to Counts Two and Three.

9. The allegations contained in Count One of this Indictment are repeated and realleged as though fully set forth herein, as constituting and describing in part the scheme by which the defendants committed the offense charged in this Count.

(Title 7, United States Code, Section 2023(b) and Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

10. From on or about the 1st day of June, 1976 up to and including the date of the filing of this Indictment, the defendants CARLOS FERNANDEZ, JOSEPH COMACHO, and AIDA RODRIGUEZ, unlawfully, wilfully and knowingly did use, transfer, acquire, alter and possess coupons and authorization to purchase cards in a manner not authorized by Title 7, United States Code, Chapter 51 and the regulations issued pursuant to said Chapter, said coupons and authorization to purchase cards having a value in excess of \$100, in that the defendants CARLOS FERNANDEZ, JOSEPH COMACHO, and AIDA RODRIGUEZ, did use, transfer, acquire, alter and possess coupons and authorization to purchase cards in a manner

inconsistent with paragraphs two through seven of the Introduction to Counts Two and Three.

11. The allegations contained in Count One of this Indictment are repeated and realleged as though fully set forth herein, as constituting and describing in part the scheme by which the defendants committed the offense charged in this Count.

(Title 7, United States Code, Section 2023(b) and Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

1. From on or about the 1st day of June, 1975 up to and including the filing of this Indictment, the defendants ANDRES COLLAZO, JOSEPH RIVERA, JOSE LOBRIEL, a/k/a "Chegui", JOSE ROSADO, FRANK CUEVAS, a/k/a "Frankie", MODESTA DIAZ, ISHMAEL SUAREZ TORREZ, a/k/a "Eddie", HECTOR PEREZ, and JUSTA COLLAZO, unlawfully, wilfully, and knowingly did embezzle, steal, purloin and knowingly convert to his use and to the use of another, and without authority did sell, convey, and dispose of records, vouchers, moneys, and things of value of the United States and the United States Department of Agriculture, and property made and being made under contract for the United States and the United States Department of Agriculture, with a value in excess of \$100, namely Department of Agriculture food stamp coupons and authorization to purchase cards.

2. The allegations contained in Count One of this Indictment are repeated and realleged as though fully set forth herein, as constituting and describing in part the scheme by which the defendants committed the offense charged in this Count.

(Title 18, United States Code, Sections 641 and 2.)

COUNT FIVE

The Grand Jury further charges:

1. From on or about June 1, 1976 up to and including the filing of this Indictment, the defendants, CARLOS FERNANDEZ, JOSEPH COMACHO, and AIDA RODRIGUEZ, unlawfully, wilfully, and knowingly did embezzle, steal, purloin and knowingly convert to his use and to the use of another, and without authority did sell, convey, and dispose of records, vouchers, moneys, and things of value of the United States and the United States Department of Agriculture, and property made and being made under contract for the United States and the United States Department of Agriculture, with a value in excess of \$100, namely Department of Agriculture food stamp coupons and authorization to purchase cards.

2. The allegations contained in Count One of this Indictment are repeated and realleged as though fully set forth herein, as constituting and describing in part the scheme by which the defendants committed the offense charged in this Count.

(Title 18, United States Code, Sections 641 and 2).

COUNT SIX

The Grand Jury further charges:

1. From on or about the 1st day of June, 1975 up to and including the filing of this Indictment, the defendants ANDRES COLLAZO, JOSEPH RIVERA, JOSE LOBRIEL, a/k/a "Chegui," JOSE ROSADO, FRANK CUEVAS, a/k/a "Frankie," MODESTA DIAZ, ISHMAEL SUAREZ TORREZ, a/k/a "Eddie," HECTOR PEREZ, and JUSTA COLLAZO, unlawfully, wilfully, and knowingly did make and present and cause others to make and present to a department and agency of the United States, namely the United States Department of Agriculture, a claim upon and against the United States and a department and agency

of the United States, namely, United States Department of Agriculture food coupons and United States Department of Agriculture Food Stamp Redemption Certificates claiming that that the United States Department of Agriculture pay the defendants and their co-conspirators the value of the food coupons presented for redemption, knowing such claim to be false, fictitious and fraudulent.

2. The allegations contained in Count One of this Indictment are repeated and realleged as though fully set forth herein, as constituting and describing in part the scheme by which the defendants committed the offense charged in this Count.

(Title 18, United States Code, Sections 287 and 2.)

COUNT SEVEN

The Grand Jury further charges:

1. From on or about the 1st day of June, 1976 up to and including the filing of this Indictment, the defendants CARLOS FERNANDEZ, JOSEPH COMACHO, and AIDA RODRIGUEZ, unlawfully, willfully, and knowingly did make and present and cause others to make and present to a department and agency of the United States, namely the United States Department of Agriculture, a claim upon and against the United States and a department and agency of the United States, namely, United States Department of Agriculture food coupons and United States Department of Agriculture Food Stamp Redemption Certificates claiming that that the United States Department of Agriculture pay the defendants and their co-conspirators the value of the food coupons presented for redemption, knowing such claim to be false, fictitious and fraudulent.

2. The allegations contained in Count One of this Indictment are repeated and realleged as though fully set forth herein, as constituting and describing in part the scheme by which the defendants committed the offense charged in this Count.

(Title 18, United States Code, Sections 287 and 2.)

COUNT EIGHT

The Grand Jury further charges:

On or about the 16th day of September, 1976 the defendant AIDA RODRIGUEZ, a/k/a "Lucy," being a Postal Service employee, unlawfully, wilfully, and knowingly did embezzle letters, mail, and things contained therein entrusted to her and which came into her possession intended to be conveyed by mail, and carried and delivered by any carrier, messenger, agent and other person employed by the Postal Service, and forwarded through and delivered from any post office and station thereof established by authority of the Postal Service, and did steal, abstract and remove from such letter, package, bag, and mail, articles and things contained therein, namely, approximately 441 authorization to purchase cards.

(Title 18, United States Code, Section 1709.)

COUNT NINE

The Grand Jury further charges:

1. From on or about the 1st day of June, 1975 up to and including the filing of this Indictment, the defendants, ANDRES COLLAZO, JOSEPH RIVERA, JOSE LOBRIEL, a/k/a "Chegui," JOSE ROSADO, FRANK CUEVAS, a/k/a "Frankie," MODESTA DIAZ, ISHMAEL SUAREZ TORREZ, a/k/a "Eddie," HECTOR PEREZ, and JUSTA COLLAZO, unlawfully, knowingly and willfully did make and cause others to make false, fictitious and fraudulent statements and representations and did make and use and cause others to make and use false writings and documents knowing the

same to contain false, fictitious and fraudulent statements and entries, in a matter within the jurisdiction of a department and agency of the United States, namely the United States Department of Agriculture, in that the defendant did file and cause others to file with the United States Department of Agriculture statements, writings, and documents, namely, United States Department of Agriculture Food Stamp Redemption Certificates stating that food stamp coupons submitted for redemption were accepted in accordance with the Food Stamp Program Regulations. 21a

2. The allegations contained in Count One of this Indictment are repeated and realleged as though fully set forth herein, as constituting and describing in part the scheme by which the defendants committed the offense charged in this Count.

(Title 18, United States Code, Sections 1001 and 2.)

COUNT TEN

The Grand Jury further charges:

From on or about the 1st day of June 1976 up to and including the filing of this Indictment, the defendants, CARLOS FERNANDEZ, JOSEPH COMACHO, and AIDA RODRIGUEZ, unlawfully, knowingly and willfully did make and cause others to make false, fictitious and fraudulent statements and representations and did make and use and cause others to make and use false writings and documents knowing the same to contain false, fictitious and fraudulent statements and entries, in a matter within the jurisdiction of a department and agency of the United States, namely the United States Department of Agriculture, in that the defendants did file and cause others to file with the United States Department of Agriculture statements, writings

and documents, namely, United States Department of Agriculture Food Stamp Redemption Certificate stating that food stamp coupons submitted for redemption were accepted in accordance with the Food Stamp Program Regulations.

2. The allegations contained in Count One of this Indictment are repeated and realleged as though fully set forth herein, as constituting and describing in part the scheme by which the defendants committed the offense charged in this Count.

(Title 18, United States Code, Sections 1001 and 2.)

Joseph Feldman
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

CHARGE TO JURY
(pp. 23a-100a)

912

jka

AFTERNOON SESSION(1:45 p.m.)

(In open court; jury not present.)

THE COURT: Now, this charge which I am about to give is going to be long. It may well be, although I'm not going to read all of the conspiracy count, I'm only going to read parts of it, it may be that, especially if we take a recess, as I think we will, maybe 4 o'clock before I finish.

That is rather late to be giving the case to a jury.

And I usually tell a jury at the end of the charge, as they go out, that whether they have reached a verdict or not, I'm going to send them home at 6 o'clock. If they have reached a verdict as to any defendant on any count, we can take a partial verdict at that time and they can come back tomorrow morning and resume their deliberations.

The reason I do that I think should be fairly obvious. I don't want a jury concerned that they are going to be locked up for the night, and therefore feel under some compulsion of personal affairs or personal convenience to reach a verdict.

I tell you this, because I invite the views

1 jka

2 of counsel. If all counsel are agreed that that is
3 the proper thing to do I will go ahead and do it.
4 If they aren't I will reconsider it.

5 What do you think, Mr. Weinberg?

6 MR. WEINBERG: Your Honor, since I was in-
7 formed by your law clerk that your practice was not
8 to have juries deliberate in the evening, that the
9 procedure your Honor has proposed is fine with the
10 government.

11 THE COURT: Mr. Gotkin?

12 MR. GOTKIN: Well, your Honor, did you
13 intimate that you may dismiss them at 4 and tell them
14 to start tomorrow? Were you intimating that you
15 were thinking of dismissing them at 4 --

16 THE COURT: No, no. I will tell them
17 when I finish my instructions, just before I send them
18 out to deliberate, that when they reach a verdict on
19 all counts as to both defendants by 6 o'clock -- if
20 they haven't, I'm going to send them home at 6 o'clock
21 and have them come back tomorrow morning; and if they
22 have reached a verdict on any count as to any defendant
23 I will take it at 6 o'clock and let them go.

24 MR. GOTKIN: I just wouldn't want a
25 partial verdict, your Honor.

1 jka

2 THE COURT: Well, I don't care whether
3 you want it or not, but do you object to my telling
4 them at the end of my instructions that I am going to
5 let them go at 6 o'clock?

6 MR. GOTKIN: No, your Honor.

7 THE COURT: Mr. Shaw?

8 MR. SHAW: I think it's a very good
9 procedure, your Honor. I go along with it. Thank
10 you.

11 THE COURT: All right.
12 Marshal, would you bring the jury in.

13 THE MARSHAL: Yes, sir.

14 (Jury present.)

15 THE COURT: Madam Clerk, would you make
16 the announcement.

17 THE CLERK: Yes, Judge.

18 The court is about to charge the jury.
19 Any spectator who wishes to leave the courtroom will
20 do so now or you are to remain seated until the completion
21 of the court's charge.

22 Will the marshals please lock the door.

23

24

25

jka

CHARGE OF THE COURT

(Wyatt, J.)

THE COURT: Madam Foreman, ladies and gentlemen of the jury:

This case is now at the final stage of the trial. This case is now about to be submitted to you, the jury, for your decision. Your final function and responsibility is to decide the fact issues in the case, and of course your decision of those fact issues determines whether your verdict as to each of these two defendants is guilty or not guilty.

In making your decisions you act as ministers of justice, and you discharge an obligation of citizenship which it is not too much to call sacred.

In making your decisions you are to adopt an attitude of complete fairness and complete impartiality. You are to appraise the evidence calmly and objectively and without any bias or prejudice for or against the government or for or against either of the two defendants.

In this connection I should add that the fact that the government is a party and that the prosecution is brought in the name of the United States of America does not entitle the government and its witnesses

jka

to any greater consideration than that accorded to the defendants.

At the same time, the government and its witnesses are entitled to no less consideration. All parties, government and individuals alike, stand as equals here at the bar of justice.

The jurors are the sole judges of the facts. You determine the weight of the evidence and the credibility of all witnesses. You decide any and all conflicts in the evidence, all differences in the evidence you resolve.

You draw whatever reasonable inferences are justified from the facts as you may find those facts to be.

jkpl

1B

1
2 My function at this point is to give you
3 instructions as to the applicable law. I regret that
4 these instructions will be long and they will seem to you
5 to be long, but you will appreciate they must be
6 thorough, and in that connection I wish I were able to
7 deliver my instructions completely extemporaneously,
8 but I cannot be certain that I will cover adequately,
9 completely and accurately all of the points involved unless
10 I make frequent reference to my notes, and that is what I
11 will have to do in a case of this sort.

12 Now, I say my function is to give you in-
13 structions as to the applicable law. Your duty is to
14 accept and to follow my instructions, however long, and
15 apply them to the facts as you may find the facts to be.

16 Now, members of the jury, in determining what
17 the facts are, you must look solely to the sworn testimony
18 and other evidence such as documentary evidence and, of
19 course, you take into account any evidence brought out
20 in the cross-examination of witnesses.

21 You must rely on your own recollection of
22 the testimony and other evidence because it is your
23 recollection which controls. What I may say as to any
24 fact during these instructions or earlier at the trial
25 and what counsel said this morning in their closing

1 jkp2

2 arguments or at any other point in the trial are not to
3 be taken in place of your own recollection, which is what
4 controls.

5 I also emphasize that questions asked a
6 witness by counsel or by the Court are never evidence.
7 It is only the answer which is evidence and never the
8 question.

9 You are not to assume that I have any
10 opinion as to the guilt or innocence of either defendant
11 or as to the truth or falsity of any of the charges.

12 The rulings that I have made during the trial
13 are determined entirely by principles of law and not
14 fact.

15 In this connection, you should bear in mind
16 that counsel not only have a right but have the legal
17 duty to raise whatever legal objections there may be
18 to the admissibility of evidence and they have the right
19 and the legal duty to make any other objections or
20 requests which they deem in the interest of their
21 respective parties.

22 Any ruling that I may have made as to the
23 admissibility of evidence or any other type of ruling
24 is to be disregarded by the jury as irrelevant to your
25 task.

jkn3

1
2 I would similarly remind the jury that what
3 is said between the Court and counsel, the jury should
4 disregard. In this connection, particularly, it must
5 be remembered that judges indeed are only human.
6 Sometimes they are impatient. I have been from time to
7 time impatient. It is a fault on my part and I ask you
8 to forgive it and to disregard it, and certainly to draw
9 no inference against the side to which my impatience may
10 from time to time have been directed.

11 Counsel for all parties have been able and
12 devoted and their zeal in behalf of their respective
13 clients is commendable.

14 I would also remind the jury that when
15 occasionally I asked a question of one or more witnesses
16 my questions were simply intended to make something
17 clearer or more understandable for the jury and certainly
18 did not indicate any view or opinion of mine as to the
19 guilt or innocence of either of the defendants or
20 as to the credibility of any witness.

21 Once again, I repeat, if I should mention
22 some fact during these instructions and should fail to
23 mention other fact, you are to attach no significance to
24 it. Nothing said in these instructions, nothing said
25 by me at any time during the trial is to be taken by you

1 jkp4

2 as any indication of my views as to the credibility of
3 any witness or as to how you are to decide the guilt
4 or innocence of either of the two defendants.

5 The charges in a criminal prosecution are
6 contained in what is called an indictment filed, or
7 as it is sometimes said, returned by a grand jury.
8 Each separate charge is required to be set out in a
9 separate section of the indictment called a count.

10 The indictment in this case, as returned by
11 the grand jury, contained 10 counts naming 12 defendants.
12 Of the 12 only two, Ishmael Suarez-Torrez and Hector
13 Perez, are on trial before you.

14 The fact that other defendants are named in
15 the indictment and for one reason or another are not here
16 on trial is irrelevant to the issue whether the two
17 defendants now on trial are guilty or not guilty.
18 They are the only persons whose guilt or innocence you
19 must announce by your verdict, although in determining and
20 in considering the guilt or innocence of each defendant
21 here you may have to determine the nature of the participa-
22 tion, if any, of others.

23 Under our system guilt is personal. The guilt
24 or innocence of each of the defendants on trial here must
25 be determined with respect to him solely on the evidence

1 jkp5

2 presented against him or the lack of evidence.

3 The case of a defendant stands or falls upon
4 the evidence or lack of evidence as to him and not on
5 the situation as to somebody else.

6 The indictment, as I think I have said before
7 several times, perhaps, is merely an accusation. It is a
8 charge. It is not evidence and no proof of the guilt
9 of either of the defendants.

10 You will not give any weight whatever to the
11 fact that an indictment has been returned against the two
12 defendants. Each has pleaded not guilty. The government
13 has the burden of proving the charges against each
14 of the defendants as to each count beyond a reasonable
15 doubt. That burden does not shift and it remains upon
16 the government throughout the entire trial.

tpl

2A

1
2 A defendant does not have to prove his
3 innocence. He does not have to put in any case in
4 defense. On the contrary, he is presumed to be
5 innocent of the accusations contained in the indict-
6 ment.

7 This presumption of innocence disappears
8 if, and only if, and when you, the jury, are satisfied
9 that the guilt of a defendant has been proved by the
10 government beyond a reasonable doubt. And in weighing
11 the evidence to determine whether there has been proof
12 beyond a reasonable doubt, you should consider the quality
13 and the substance of the evidence and not the quantity or
14 the number of witnesses.

15 Now, members of the jury, what is a reasonable
16 doubt?

17 We say that a reasonable doubt is a doubt
18 founded on reason and arising out of the evidence, or
19 lack of evidence. It is a doubt which a reasonable person
20 has after carefully weighing all the evidence. It is a
21 doubt which is substantial and not shadowy. A reasonable
22 doubt is one which appeals to your common sense, your
23 experience, your reason.

24 It is not an excuse to avoid the performance
25 of an unpleasant duty. It is not sympathy for the

1 tp2

2 defendant. A reasonable doubt is not a vague, speculative,
3 imaginary doubt, but such a doubt as would cause a
4 prudent person to hesitate about acting in matters of
5 importance to him or to her.

6 Now, proof beyond a reasonable doubt does
7 not mean proof to a positive certainty or beyond all
8 possible doubt. If that were the rule, few men or
9 women, however guilty, would ever be convicted, because
10 it is practically impossible for a person to be ab-
11 solutely and completely convinced of any controverted
12 fact which is not, by its nature, capable of being proved
13 to a mathematical certainty.

14 In consequence, the law, in a criminal case,
15 is that it is sufficient that the guilt of a defendant
16 be established beyond reasonable doubt and not beyond all
17 possible doubt.

18 The charges here arise in the context of the
19 administration of the Food Stamp Act and the Food Stamp
20 Program.

21 This program was established by Congress to
22 aid low-income families or households to purchase a
23 nutritionally adequate diet through normal channels of
24 trade.

25 To insure that the food stamps were only

1
2 used by families with a certain minimal income and that
3 these families used these food stamps to purchase food
4 and specified beverages, Congress enacted certain safe-
5 guards and delegated to the Department of Agriculture
6 and to local government the responsibility to promulgate
7 other safeguards to insure the integrity of the Food
8 Stamp Program.

9 Among other things, Congress, in the Food
10 Stamp Act, provided for criminal penalties in the case of
11 individuals who used, transferred, acquired or possessed
12 food stamps or authorization to purchase cards in a
13 manner not authorized by the Act or by regulations.

14 It may be of help to the jury if, before we
15 discuss the specific charges, there were an explanation
16 of the food stamp procedure.

17 The program was to be put in effect in any
18 State if the State so requested. New York did so request
19 and the program was in effect in New York, and specifically
20 in New York City, where the incidents which are the
21 subject of this indictment arose.

22 The object of the program was to provide
23 eligible households in the State with food stamps to be
24 used by such households only for the purchase of food from
25 authorized retail food stores. Food stamps are sometimes

tp

called coupons, and we will use the two terms coupons or food stamps interchangeably.

An eligible household is one whose income and other financial resources are relatively low and, thus, are substantial limiting factors in permitting the purchase of a nutritionally adequate diet.

The food stamps are sold to eligible households for substantially less than the face amount of the stamps. The selling price is related to the income of the eligible household and, thus, the price varies between various eligible households because their income varies.

2 The difference between the face value
3 of the stamps and the price at which they are sold
4 is a contribution or gift of the federal government
5 to the program.

6 Now, the eligible household may use the
7 food stamps only for the purpose of food from authorized
8 retail food stores. The designation of such
9 stores is done by the federal Department of Agriculture.
10

11 The food stamps are redeemed at their face
12 value by the Secretary of Agriculture through the
13 United States Treasury. The retail food stores who
14 have accepted the food stamps in payment for food from
15 an eligible household may secure the redemption
16 value of the stamps in one of two ways: either
17 by presenting them, the stamps, with a redemption
18 certificate to a bank for cash or credit to an account
19 or by presenting them, the stamps, with a redemption
20 certificate to an authorized wholesale food concern in
21 payment for food purchased or for cash.

22 So you see the food stamps move from
23 the eligible household to the retail food store and
24 then the retail food store has a choice either to
25 take it to the bank and get credit to the bank account

1 ata2

2 or cash or use it to buy food for the retail store from
3 a wholesale food concern or ask the wholesale food
4 concern to give cash for the stamps.

5 Now, the designation of "authorized whole-
6 sale food concerns" is also done by the federal De-
7 partment of Agriculture.

8 Banks are authorized to accept coupons from
9 authorized retail food stores and authorized wholesale
10 food concerns.

11 So you see that from the eligible household
12 consumign the food, the stamps move to a retail food
13 store and then either directly to a bank or
14 through a wholesale food concern to a bank, but ul-
15 timately all of thhe food stamps wind up in the
16 hands of a bank.

17 I should follow through from the banks,
18 because the banks are repaid for the coupons through
19 the Federal Reserve System by the Treasurer of the
20 United States. **Thus**, the coupons are paid for by
21 the United States.

22 Redemption certificates must accompany the
23 coupons when they are presented for redemption.
24 These redemption certificates were generally referred
25 to in the testimony here for some reason as IBM cards,

1 gta3

2 but technically they are redemption certificates as that
3 term is used in the law.

4 Now, under the Food Stamp Act, much of the
5 administration of the program is done by a state agency
6 as opposed to a federal agency. In this case the state
7 agency acted through the Department of Social Services,
8 Human Resources Administration of the City of New York.

9 The state determines what households are
10 eligible to buy coupons and sends to them, the eligible
11 households, through the mails twice a month or monthly
12 an authorization to purchase food stamps, or as it has
13 been so often called here an ATP card.

14 The federal government, specifically the
15 Department of Agriculture, prints the coupons, the food
16 stamps, and supplies them to the city agency, delivering
17 them to receiving points specified by the state agency,
18 such as the Department of Social Services of the City
19 of New York.

20 The state agency administres the issuance of
21 coupons, and in New York it is provided that eligible
22 households who are going to consume the food can
23 purchase their food stamps, among others, from banks and
24 check cashers which are paid a service fee for their
25 services in selling the food stamps.

1 gta4

2 Now, we may stop long enough to notice check
3 cashers.

4 We had several different terms for this enter-
5 prise used in the testimony to describe the business.

6 I should tell you that under New York law on
7 one may engage in the business of cashing checks for a
8 fee without obtaining a license to do so, and the term
9 used in the law is "licensed casher of checks."

10 We can say simply check, cashers.

11 So the head of an eligible household can take
12 the ATP card which he or she received through the mail
13 from the Department of Social Services of the City of
14 New York either to a bank or to a check casher and buy
15 the food stamps or coupons.

16 I believe we have now covered in a general
17 way the procedure prescribed for food stamps.

18 Now, four counts, four charges will be submitted
19 to the jury for your decision.

20
21
22
23
24
25

T#3a 1

jka

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Three of these charge what are called substantive offenses. They are counts 2, 4 and 6. By the way, the jury need not try now to remember the **numbers** of these counts because I will repeat them later, and will also at the end of these instructions give to Madam Foreman a copy of the relevant parts of the indictment for the jury's use during its deliberations.

And these three counts, 2, 4 and 6, are called substantive offenses to distinguish them from the separate offense of conspiracy. A substantive offense is conduct which actually violates a specific criminal law making such conduct an offense. But Congress has made it an entirely separate, distinct and different offense to conspire to violate a criminal law, that is, a law creating a substantive offense.

Count 1 of this indictment charges a conspiracy.

Now, for our purposes here, I believe it would be more helpful to the jury if we take up the separate counts not in numerical order, but first the substantive counts, 2, 4 and 6, and then the conspiracy count, count 1.

Now, I will now read you count 2 of the

jka

indictment, and I am omitting the introduction.

Count 2, part 8:

"From on or about the 1st day of June, 1975 up to and including the date of the filing of this Indictment, in the Southern District of New York, the defendants Andres Collazo, Joseph Rivera, Jose Lobriiel, also known as 'Chequi', Jose Rosado, Frank Cuevas, also known as 'Frankie', Modesta Diaz, Ishmael Suarez Torrez, also known as 'Eddie', Hector Perez, and Justa Collazo unlawfully, wilfully and knowingly did use, transfer, acquire, alter and possess coupons and authorization to purchase cards in a manner not authorized by Title 7, United States Code, Chapter 51" -- that is the Food Stamp Act -- "and the regulations issued pursuant to said Chapter, said coupons and authorization to purchase cards having a value in excess of \$100, in that the defendants Andres Collazo, Joseph Rivera, Jose Lobriiel, also known as 'Chequi', Jose Rosado, Frank Cuevas, also known as 'Frankie', Modesta Diaz, Ishmael Suarez Torrez, also known as 'Eddie', Hector Perez, and Justa Collazo, did use, transfer, acquire, alter and possess coupons and authorization to purchase cards in a manner inconsistent with paragraphs two through seven of the Introduction to Counts Two

1 jka

2 and Three.

3 "9. The allegations contained in Count
4 One of this Indictment are repeated and realleged as
5 **though** fully set forth herein, as constituting and
6 describing in part the scheme by which the defendants
7 committed the offense charged in this Count."

8 You have just heard that this count 2
9 charges nine defendants, but you are only concerned
10 with the two defendants here on trial, Torrez and
11 Perez. By their plea of not guilty, each of these
12 defendants denies the charge and thus puts it in
13 issue.

14 The theory of the government as to this
15 count 2 is that when ATP cards were presented to
16 these two defendants they each knew that Rosado and
17 Rivera were not the heads of an eligible household,
18 were not entitled to have the ATP cards, were not
19 entitled to buy food stamps, and were not going to use
20 the food stamps to buy food, that they therefore --
21 that is, these two defendants -- acquired and possessed
22 the ATP cards in a manner not authorized by the statute
23 **and** regulations, and that when the two defendants
24 delivered food stamps to Rosado and Rivera, each trans-
25 ferred such coupons in a manner not authorized by the

jka

statute and regulations.

Each of these two defendants denies by his plea of not guilty that he had such knowledge, denies that he had any wilful intent, denies that he violated the statute or the regulations, and denies that the evidence establishes any such violation.

The section of the criminal law charged to have been violated in count 2 states in relevant part:

"Whoever knowingly uses, transfers, acquires, alters or possesses coupons or authorization-to-purchase cards in any manner not authorized by this chapter or the regulations issued pursuant to this chapter shall, if such coupons or authorization-to-purchase cards are of the value of \$100 or more, be guilty of an offense."

To establish the charge in this count 2, the government must satisfy you beyond a reasonable doubt of these essential elements:

1. That the defendant used, transferred, acquired, altered or possessed food stamps or ATP cards in a manner not authorized by law; and,
2. That he did so knowingly and wilfully.

jka

As to the first element, the words "used, transferred, acquired, altered and possessed" have their normal and usual meanings.

As to the second element, to do an act knowingly means to do it voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

Now, because knowingly and wilfully appear frequently in these instructions, I am going to repeat what I just said and then I won't repeat it any more: I will simply use the words "knowingly" and "wilfully."

To do an act knowingly means to do it voluntarily and intentionally and not because of mistake or accident or other innocent reason.

To act wilfully means to act knowingly, deliberately and with a bad purpose and motive, but it is not necessary that a defendant know that he was breaking any particular law.

Now, members of the jury, if you find that the government has proved beyond a reasonable doubt the two essential elements of this charge as I have just explained them, and that either defendant is or both defendants are guilty, then the jury must

jka

find whether the value of the coupons or authori-
zation cards in question was more than \$100. The
reason for this is simply that the law provides a
different penalty if the value of the coupons or
cards exceeds \$100.

jkl

3B

Now value, according to the Federal law, means face, par or market value or cost price, either wholesale or retail, whichever is greater, and the value of the coupons or cards in question is an issue of fact to be determined by you, the jury.

Now, I am going to give a little memorandum when my instructions are concluded to Madam Foreman as a guide in formulating your verdict and on that memorandum I indicate a special question as to the value of the coupons or cards, if you find either defendant or both defendants guilty. To answer that the value of the coupons or cards was more than a hundred dollars, the government must establish that fact beyond a reasonable doubt.

Now let us turn to the next substantive charge, Count 4 of the indictment, and I will read Count 4 to you.

"The Grand Jury further charges:

"1. From on or about the 1st day of June, 1975, up to and including the filing of this Indictment, the defendants Andres Collazo, Joseph Rivera, Jose Lobriel, a/k/a Chequi, Jose Rosado, Frank Cuevas, a/k/a Frankie, Modesta Diaz, Ishmael Suarez-Torrez, a/k/a Eddie, Hector Perez, and Justa Collazo, unlawfully, wilfully

48a

jhp2

1 and knowingly did embezzle, steal purloin and knowingly
2 convert to his use and to the use of another, and
3 without authority did sell, convey, and dispose of
4 records, vouchers, moneys, and things of value of
5 the United States and the United States Department of
6 Agriculture, and property made and being made under
7 contract for the United States and the United States
8 Department of Agriculture, with a value in excess of
9 \$100, namely, Department of Agriculture food stamp coupons
10 and authorization to purchase cards.
11

12 "2. The allegations contained in Count One
13 of this Indictment are repeated and realleged as though
14 fully set forth herein, as constituting and describing
15 in part the scheme by which the defendants committed the
16 offense charged in this Count."
17

18 Again, you have just heard that this count
19 charges nine defendants but you are only concerned with
20 the two defendants here, Torrez and Perez.

21 By their plea of not guilty, each of the two
22 defendants denies the charge and thus puts it in issue.

23 The section of law alleged to have been
24 violated in this Count 4 reads in relevant part:

25 "Whoever embezzles, steals, purloins or
knowingly converts to his use or the use of another,

1 jkp3

2 or without authority sells, conveys or disposes of any
3 record, voucher, money or thing of value of the United
4 States, or of any department or agency thereof, or any
5 property made or being made under contract to the United
6 States or any department or agency thereof, is guilty
7 of an offense."

8 To establish the charge in Count 4, the
9 government must prove beyond a reasonable doubt these
10 essential elements: First, that there was a record or
11 voucher or money or thing of value of the United States
12 or any department or agency of the United States or
13 property made or being made under contract for the United
14 States or any department or agency of the United States;

15 Second, that the defendant stole, purloined
16 or knowingly converted into his use or the use of another,
17 or without authority sold, conveyed, or disposed of it;

18 And third, that the defendant did so wil-
19 fully.

20 Now, as to the first element, the Department
21 of Agriculture is, beyond question, and as a matter of
22 law, a department or agency of the United States.

23 Moreover, I must tell you that as a matter
24 of law a food stamp is a record and a voucher and a thing
25 of value of the United States.

1 jkp4

2 But I must also tell you that an ATP card
3 is not any one of the things described in the statute
4 because it is made and issued, as you earlier heard me
5 say, by a State agency, in this case the New York City
6 Department of Social Services.

7 Therefore, in your consideration of Count 4
8 you should disregard the evidence as to the ATP cards
9 and consider the food stamps only. That is simply as to
10 Count 4, because the ATP cards are not shown to be
11 property of the United States, to put it shortly, as to
12 Count 4 only.

13 Now, the theory of the government as to this
14 Count 4 and as to the food stamps is that Torrez and
15 Perez, of course separately and at different times and
16 places, sold food stamps to Rosado and Rivera; that
17 they knew that Rosado and Rivera were not entitled to
18 buy food stamps and were not going to use those stamps
19 to buy food; that they thus sold and conveyed and disposed
20 of, without authority, records and vouchers and things of
21 value of the United States and knowingly converted the
22 food stamps to the use of Rosado and Rivera.

23 Each of these two defendants denies by his
24 plea of not guilty that he had such knowledge, denies
25 that he had any willful intent, and denies that he con-

1 jkp5

2 verted any food stamps or sold, conveyed or disposed of
3 any without authority.

4 As to the second element, sold, conveyed
5 and disposed of are terms which have their common every-
6 day meaning.

7 I should perhaps explain to you the terms
8 "convert." In law, to convert is to exercise un-
9 authorized control over property, to deal with property
10 in a way not authorized by the owner, to appropriate it
11 to the benefit of oneself or to the benefit of someone
12 else not entitled to such benefit. That is convert.

13 Now, as to the third element, wilfully,
14 I have already defined that term and there is no need
15 to repeat it here.

16 Members of the jury, if you find that the
17 government has proved beyond a reasonable doubt the
18 essential elements in the charge of Count 4 as I have
19 explained it, and that either defendant is or both
20 defendants are guilty, then the jury must find whether
21 the value of the coupons in question was more than \$100.

22 The reason for this, again, is simply that
23 the law provides a different penalty if the value of the
24 property exceeds \$100.

25 And I explained before how value is found,

jkg6

1 and that is not necessary to be repeated, and on the
2 memorandum which I will give Madam Foreman at the close
3 of these instructions there will be a special question
4 as to this count and, of course, to answer the question
5 that the value of the coupons was more than \$100, the
6 government would be obliged to prove that beyond a
7 reasonable doubt.
8

9 Now, in connection with Count 4, and also in
10 connection with a later count, so that the instruction
11 which I am giving you now applies not only to Count 4,
12 but it will later, as I will remind you, apply also to
13 Count 6, the government also relies on another statute
14 sometimes called the aiding and abetting statute.

15 This reads as follows:

16 "(a) Whoever commits an offense against the
17 United States or aids, abets, counsels, commands, induces
18 or procures its commission is punishable as a principal.

19 "(b) Whoever wilfully causes an act to be
20 done which if directly performed by him or another would
21 be an offense against the United States is punishable
22 as a principal."
23
24
25

tp

4a

1
2 This means that not only is the person who
3 commits an illegal act, the person usually called the
4 principal, guilty, but anyone who aids and abets in
5 the commission of the act is likewise guilty of committing
6 that illegal act.

7 In order to find that a defendant aided or
8 abetted another to commit an offense charged, you must
9 find that the defendant in some way associated himself
10 with the criminal venture, that he participated in it as
11 something which he wished to bring about, that by his act
12 or acts he endeavored to make it succeed.

13 In determining this question, you may consider
14 whether a defendant had any stake in the venture, since
15 financial interest in the outcome of a crime is sometimes
16 significant as to motive.

17 This participation by a defendant may be shown
18 by any act designed to promote or further the crime,
19 even of relatively slight importance, which you find
20 was committed by a defendant. But to find a defendant
21 guilty of aiding and abetting, you must find something
22 more than mere knowledge on his part that a crime was
23 being committed, since a mere spectator at a crime
24 is not a participant.

25 It is not necessary, however, to find that

1 tp

2 he himself did any of the acts, since participation in
3 the crime can, for example, be found if you find that he
4 counselled another person to commit the crime.

5 Now, members of the jury, I think we all
6 appreciate that it is difficult to follow continuously
7 these instructions which necessarily deal with somewhat
8 complicated matters.

9 It is something over an hour since we
10 began. I think it would be useful if we had a stretch
11 period and the jury retired for a few minutes to the jury-
12 room and then we will resume.

13 You may retire to the juryroom.

14 Thank you.

15 (The jury left the courtroom.)

16 THE COURT: Suppose we take a few minutes'
17 break.

18 Yes, Mr. Shaw?

19 MR. SHAW: That is exactly what I was going
20 to say, your Honor.

21 I had some comments to make, but I would
22 prefer if your Honor took a break, also, because this
23 is quite an arduous task you are undertaking, if I may
24 say so.

25 THE COURT: I will give you an opportunity

1 tp

2 when I finish to take exceptions and make comments.

3 MR. SHAW: Okay.

4 Thank you, your Honor.

5 THE COURT: All right. Let's take a little
6 break.

7 (Recess.)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

T#1b 1

gtal

2

(In open court; jury present.)

3

THE COURT: Now, Madam Foreman, ladies

4

and gentlemen of the jury, we turn to count 6, which

5

I will read to you:

6

"The Grand Jury further charges:

7

"1. From on or about the 1st day of

8

June, 1975 up to and including the filing of this Indict-

9

ment, the defendants Andres Collazo, Joseph Rivera,

10

Jose Lobriel, also known as 'Chequi,' Jose Rosado,

11

Frank Cuevas, also known as 'Frankie,' Modesta Diaz,

12

Ishmael Suarez Torrez, also known as 'Eddie,' Hector

13

Perez, and Justa Collazo, unlawfully, wilfully, and

14

knowingly did make and present and cause others to

15

make and present to a department and agency of the

16

United States, namely the United States Department of

17

Agriculture, a claim upon and against the United States

18

and a department and agency of the United States, namely,

19

United States Department of Agriculture food coupons

20

and United States Department of Agriculture Food Stamp

21

Redemption Certificates claiming that the United States

22

Department of Agriculture pay the defendants and their

23

co-conspirators the value of the food coupons presented

24

for redemption, knowing such claim to be false, ficti-

25

tious and fraudulent.

1 qta2

2 "2. The allegations contained in Count
3 One of this Indictment are repeated and realleged as
4 through fully set forth herein, as constituting and
5 describing in part the scheme by which the defendants
6 committed the offense charged in this count."

7 You have heard that this count also charges
8 nine defendants as with the earlier counts, 2 and 4,
9 but you are again here only concerned with the two
10 defendants on trial, Torrez and Perez. By their
11 plea of not guilty each of these defendants denies the
12 charge and thus puts it in issue.

13 The section of criminal law charged to
14 have been violated in count 6 states, in relevant
15 part:

16 "Whoever makes or presents to any de-
17 partment or agency thereof" -- and that refers to the
18 United States -- "any claim upon or against the United
19 States or any department or agency thereof, knowing
20 such claim to be false, fictitious or fraudulent, shall
21 be guilty of an offense."

22 To establish the charge in count 6 the
23 government must satisfy you beyond a reasonable doubt
24 of these essential elements:

25 First, the defendant must have knowingly

58a

1 qta3

2 and wilfully made or presented a claim to a depart-
3 ment or agency of the United States.

4 Second, the claim must have been made upon
5 or against a department or agency of the United
6 States.

7 Third, the claim must have been false, fic-
8 titious or fraudulent.

9 Fourth, the defendant must have known that
10 the claim was false, fictitious or fraudulent.

11 For our purpose here, you may consider a
12 claim to include any voucher or document or other
13 paper prepared or intended to be used or presented to
14 procure the payment of money from or by the United
15 States or any officer, employee or agent of the United
16 States.

17 The government contends that the filing
18 of the United States Department of Agriculture food
19 stamp redemption certificates with the accompanying
20 food stamp coupons is presenting a claim to the United
21 States Department of Agriculture, this contention is
22 correct as a matter of law.

23 In considering the first and second elements,
24 the ordinary means by which coupons and redemption
25 certificates -- and you remember the redemption

1 gta4

2 certificates were generally referred to by witnesses
3 as IBM cards -- the ordinary means by which they are
4 processed is that an authorized retail food store has
5 to present such a redemption certificate and the
6 coupons when requesting cash or credit for food
7 stamps from a bank or authorized wholesale food concern.
8 Any wholesale food concern must present the coupons
9 with a redemption certificate to a bank. The
10 redemption certificates and coupons are held by the
11 receiving bank until final credit is given the bank
12 for the coupons by the Federal Reserve Bank acting for
13 the Secretary of Agriculture and ultimately for the
14 United States, and then the redemption certificates
15 are sent by the bank to an office of the Department
16 of Agriculture and the cancelled coupons are sent to
17 the Federal Reserve Bank. Thus the banks presented
18 a claim upon or against the United States and a
19 department or agency thereof when they presented
20 the redemption certificates and coupons for payment
21 by the Federal Reserve Bank.

22 The questions you need consider with re-
23 spect to count 6 are whether these defendants knowing-
24 ly and wilfully presented any redemption certifi-
25 cates or coupons, also whether the claims represented

qta

by such certificates and coupons were false, fictitious and fraudulent and whether the defendants knew that such claims were false, fictitious or fraudulent when presented.

Now, the government does not contend that either defendant himself actually physically submitted a claim to a department or agency of the United States. Instead, it relies on the aiding and abetting statute which I read and explained earlier and will not repeat.

jka

2 The government contends that these two de-
3 fendants aided and abetted Rosado and Rivera to pre-
4 sent false claims through the banks.

5 Now, it is not necessary that the person
6 who ultimately submitted the certificates and coupons
7 was aware that the claims were false, if you find that
8 these two defendants or either of them caused the false
9 claim to be made in the first instance.

10 In deciding whether the claims made were
11 in fact false, fictitious or fraudulent, a claim
12 is false if it is untrue when made and was known to
13 be untrue by the person making it or causing it to
14 be made.

15 A claim is fictitious if it does not
16 correspond to what actually occurred.

17 A statement or claim is fraudulent if it
18 was falsely made or caused to be made with the intent
19 to deceive.

20 It is not necessary that a claim be untrue
21 in its entirety in order to be false or fictitious or
22 fraudulent. If you find some statements on the
23 **certificate claim are true and others are not, you must**
24 consider whether the untrue statements were of
25 such a nature as to make the claim, taken as a whole,

false.

If the untrue portions of any claim were insignificant, then you would not consider these portions as making the claim, taken as a whole, false. But if, on the other hand, the claim includes some true information but also information which makes the claim as a whole false, this element would be satisfied.

The final element of the claim of presenting false claims for payment by the United States, which must be proved to your satisfaction beyond a reasonable doubt, is that the defendant knew that the claim was false, fictitious or fraudulent.

The statute makes it a crime to present false claims only if the defendant knows those claims to be false, fictitious or fraudulent.

Therefore, if you find that the claims were untrue but the defendant did not know them to be untrue, then this element would not be satisfied. However, if you do find that the defendant acted knowingly and wilfully in submitting false claims and that he did so with the intent to defraud, this element would be satisfied.

And you heard me use the words "knowingly"

1 and "wilfully," and I remind you that I earlier de-
2 fined those terms for you.
3

4 Now, members of the jury, we turn to the
5 last count to be discussed, the first count, the
6 conspiracy count, and I will read only part of that
7 count to you because it is very long, it was read to
8 you in the beginning, and will be given to you
9 for use in your deliberations.

10 Now, I will begin with paragraph 18 of the
11 first count:

12 "The Grand Jury further charges:

13 "18. From on or about June 1, 1975, up
14 to and including the date of the filing of this Indict-
15 ment, in the Southern District of New York and elsewhere,
16 Andres Collazo, Joseph Rivera, Jose Rosado, Jose
17 Lobriel, also known as 'Chequi', Frank Cuevas, Aida
18 Rodriguez, also known as 'Lucy', Modesta Diaz,
19 Ishmael Suarez, Torrez, also known as 'Eddie',
20 Carlos Fernancez, Joseph Comacho, Hector Perez, and
21 Justa Collazo, unlawfully, wilfully and knowingly did
22 combine, conspire, confederate and agree together and
23 with each other and with other persons to the Grand
24 Jury known and unknown, to defraud the United States
25 and the United States Department of Agriculture and

1 jka
2 to commit offenses against the United States, that is
3 to violate Title 7," and particular sections are
4 indicated, "and Title 18, United States Code," and
5 particular sections are indicated.

6 "19. It was an object of said con-
7 spiracy that the defendants and their co-conspirators
8 unlawfully, wilfully and knowingly would and did use,
9 transfer, acquire, alter and possess food stamp coupons
10 and authorization to purchase cards in a manner not
11 authorized by law, namely by Title 7, United States
12 Code, Chapter 51" -- that is the Food Stamp Act -- "and
13 regulations issued pursuant to said chapter.

14 "20. It was a further part of said
15 conspiracy that the defendants and their co-conspirators
16 unlawfully, wilfully and knowingly would and did de-
17 fraud the United States, and the United States Depart-
18 ment of Agriculture Food Stamp Program."

19 And I won't read 21.

20 "22. It was a further part of said
21 conspiracy that the defendants and their co-conspirators
22 unlawfully, wilfully, and knowingly would and did make
23 and present to a department and agency of the United
24 States, namely the United States Department of Agriculture,
25 claims upon and against the United States, and said

jka

department and agency of the United States, knowing such claims to be false, fictitious, and fraudulent.

"23. It was a further part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly would and did embezzle, steal, purloin and convert to their use and the use of others, and without authority sell, convey and dispose of records, vouchers, moneys, and things of value of the United States and the United States Department of Agriculture, and property made and being made under contract for the United States and the United States Department of Agriculture, said records, vouchers, moneys, property, and things of value in excess of \$100."

jkr

5B

And I won't read 24.

Means of the Conspiracy

And then follows 25, paragraph 25, which I will read in part:

"Among the means by which the defendants and their co-conspirators would and did carry out the conspiracy were the following:"

Then follows (a), (b), (c), which I won't read.

(d) The defendant Jose Rosado would and did transfer said authorization to purchase cards to the defendants Modesto Diaz, Joseph Comacho, Carlos Fernandez, Hector Perez and Ishmael Suarez-Torrez, also known as Eddie.

(e) The defendants Modesto Diaz, Joseph Comacho, Carlos Fernandez, Hector Perez and Ishmael Suarez-Torrez, also known as Eddie, would and did give to the defendant Jose Rosado food stamp coupons in return for the authorization to purchase cards.

(f) The defendants Modesto Diaz, Joseph Comacho, Carlos Fernandez, Hector Perez and Ishmael Suarez-Torrez, also known as Eddie, would and did obtain food stamp coupons issued by the Department of Agriculture.

(g) The defendant Jose Rosado would and did

jkg

1
2 deposit said food stamp coupons received from the
3 defendants Modesto Diaz, Joseph Comacho, Carlos
4 Fernandez, Hector Perez and Ishmael Suarez-Torrez,
5 also known as Eddie, in his bank account, and the bank
6 would credit the defendant Jose Rosado's bank account
7 for the cash value of said food stamp coupons.

8 From approximately October, 1975, through
9 August, 1976, the defendant Jose Rosado redeemed
10 approximately 2.1 million dollars in food stamp coupons.

11 (h) The defendant Jose Rosado would and did
12 withdraw money from his bank account and distribute said
13 money among the defendants **Joseph Rivera, Justa Collazo,**
14 also known as Chequi, Andres Collazo, Justa Collazo,
15 Aida Rodriguez, also known as Lucy, Modesto Diaz,
16 Joseph Comacho, Ishmael Suarez-Torrez, also known as
17 Eddie, Carlos Fernandez and Hector Perez.

18 And then follows Subsection (i), which I
19 won't read, and then a section of the 1st count headed
20 "Overt Acts," and I will explain that term in just a
21 moment.

22 In furtherance of the conspiracy and to
23 effect the objects thereof, the defendants and their
24 co-conspirators committed the following overt acts,
25 among others, in the Southern District of New York and

1 jkp

2 elsewhere, and then follow a list of very many overt
3 acts charged which I won't read.

4 You have just heard that there are 12
5 defendants charged in this 1st count, but you are
6 concerned again only with Torrez and Perez.

7 By their plea of not guilty they have
8 denied the charge and thus created the issue to be
9 tried as to this count.

10 Now, as I mentioned to you earlier, this
11 count charges each of the defendants here on trial and
12 10 others with conspiring to defraud the United States
13 and to violate other Federal laws, specifically those
14 laws which are described to you in connection with
15 Counts 2, 4 and 6. And as I said earlier, conspiracy
16 to violate Federal law or to defraud the United States
17 is a crime entirely separate, distinct and different
18 from the substantive law crimes, the violation of which
19 may be the objects of the conspiracy.

20 Now, the Federal law on conspiracy came
21 about because a conspiracy, sometimes referred to as a
22 partnership in crime, presents a greater potential threat
23 to the public than a lone, single wrongdoer. Concerted
24 action for criminal purposes generally makes it possible to
25 accomplish more important and more complex results than those

1 jkn
2 which an individual, acting alone, could accomplish.

3 Group association also increases the
4 likelihood that a criminal venture will be successful.

5 At the same time, group association renders
6 detection more difficult than when one individual is
7 acting alone.

8 For these and other reasons, Congress
9 enacted a section of the United States Code which in
10 relevant part is as follows:

11 "If two or more persons conspire either to
12 commit any offense against the United States or to defraud
13 the United States or any agency thereof in any manner or
14 for any purpose and one or more of such persons do any
15 act to effect the object of the conspiracy, each shall be
16 guilty of an offense."

17 This is the conspiracy law which the
18 defendants are charged in the 1st count with violating.

19 Now, from my reading of the conspiracy law
20 you have heard that for a violation of the law there must
21 not only be a conspiracy but also at least one act by
22 one of the conspirators to effect the object of the
23 conspiracy, and that required act is what is called an
24 overt act, and I will explain what an overt act is in
25 just a minute.

1 jkp

2 Now, the term "to defraud the United States"
3 not only means to cause financial loss, but it also
4 includes depriving the United States of the correct
5 and orderly management of its affairs.

6 The government has the right to have the
7 expenditure of its funds in the food stamp program
8 conducted free from fraud, deceit, misrepresentation,
9 interference or obstruction. Thus, the term "con-
10 spiracy to defraud the United States" is a charge that
11 the defendants conspired to furnish false information
12 and withhold truthful information from the Department
13 of Agriculture, and in order to find the defendants
14 guilty, the government must prove as to this 1st count
15 beyond a reasonable doubt the following essential
16 elements:

17 First, the existence of a conspiracy as
18 charged in the indictment, that is, that some time
19 between January 1, 1975, and November 10, 1976, the
20 date when the indictment was returned, in the Southern
21 District of New York, a conspiracy existed between either
22 of the defendants on trial and any other co-conspirators
23 as charged in the 1st count.

24 Now, we have referred to the Southern District
25 of New York and that is a geographical area over which

jlp

1
2 this Court has jurisdiction, and geographically that
3 means the County of New York, the Island of Manhattan,
4 Bronx County, Westchester County and all the counties
5 in New York on both sides of the Hudson River up to the
6 southern border of Albany County.

7 The second essential element is that a
8 defendant knowingly associated himself with the con-
9 spiracy.

10 Third, that one of the conspirators knowingly
11 committed within the Southern District of New York at
12 least one overt act.

tp

6a

1
2 It is not required that the government prove
3 that the conspiracy started and ended on the dates
4 alleged in the indictment, it is sufficient if you
5 find that a conspiracy was formed and existed for some
6 time within that period.

7 The offense of conspiracy is complete when
8 the unlawful agreement is made and any single overt act
9 is thereafter knowingly committed by at least one of the
10 co-conspirators.

11 In other words, it is not necessary to the
12 guilt of a conspiracy that the conspiracy succeed or
13 that all of the objectives of the conspiracy be attained.

14 So the conspiracy, if it ever existed, is
15 complete and the offense committed when the unlawful
16 agreement is made and any single overt act is committed.

17 Now we come to the big question:

18 What is a conspiracy?

19 A conspiracy is a combination or an agreement
20 by two or more persons by concerted action to accomplish
21 a criminal or unlawful purpose, in this instance, to
22 violate certain laws and to defraud the United States.

23 The gist of the crime of conspiracy is the
24 unlawful combination or agreement to violate the law
25 or to defraud the United States.

tp

1
2 A conspiracy is sometimes called a partnership
3 in crime in which each conspirator, each member of the
4 conspiracy, becomes the agent and partner of every other
5 member. But to establish a conspiracy, the government
6 is not required to show that two or more persons sat
7 around a table and entered into a solemn agreement or
8 pact orally or in writing stating that they have formed
9 a conspiracy to violate the law and setting forth the
10 details of the crime and the means by which the project
11 would be carried out and the part to be played by each
12 conspirator.

13 It would, indeed, be most extraordinary if
14 there were ever any such formal document or specific
15 oral agreement in the case of a criminal conspiracy.
16 Your common sense will tell you that when men and women,
17 in fact, undertake to enter into a criminal conspiracy,
18 much is left to unexpressed understanding. From its very
19 nature a conspiracy is almost always secret in origin
20 and secret in its execution.

21 It is sufficient if two or more persons,
22 in any manner, through any contrivance, impliedly or
23 tacitly, come to an understanding in common to defraud
24 the United States or to violate the law. Express
25 language or specific words are not required to indicate

1 tp

2 assent or attachment to a conspiracy.

3 In determining whether there has been an
4 unlawful agreement, you may judge by acts and conduct
5 of the alleged members of the conspiracy, whether named
6 as defendants or co-conspirators, which are done to
7 carry out an apparent criminal purpose.

8 Usually, the only evidence available is of
9 disconnected acts on the part of alleged individual
10 conspirators, which acts, however, when taken together
11 in combination with each other, show a conspiracy or
12 agreement to secure a particular result as satis-
13 factorily and as conclusively as more direct proof.

14 You must first determine from all the evidence
15 in the case whether or not a conspiracy as charged in
16 the indictment existed. You should not judge the
17 character and effect of the conspiracy by dismembering
18 it and viewing its separate parts, but only by looking at
19 it as a whole.

20 It is sufficient if from proof of all the
21 relevant facts and circumstances you find beyond a
22 reasonable doubt that the minds of at least two co-
23 conspirators met in an understanding way so as to bring
24 about a deliberate agreement to do the acts charged in
25 the indictment.

1
2 If you do conclude that a conspiracy as
3 charged did exist, then you must determine whether the
4 defendants here on trial, Torrez and Perez, were members,
5 whether they knowingly and wilfully associated them-
6 selves with the conspiracy, and in making this deter-
7 mination, you should, of course, consider all the
8 evidence in the case.

9 You again heard the words "wilfully and
10 knowingly," which I explained previously and I will not
11 repeat.

12 Now, the mere association of a defendant with
13 an alleged conspirator or mere knowledge of the con-
14 spiracy does not alone establish participation in the
15 conspiracy, if you find that the conspiracy existed.

16 In determining whether either or both of the
17 defendants here on trial was a member of the conspiracy,
18 you should consider whether in some sense he joined and
19 promoted the venture, did what he could to bring it about,
20 had some interest in its outcome.

21 Now, considering whether either or both of
22 these defendants acted knowingly and wilfully, you will
23 find that we enter into what the law calls intent.
24 And as you will appreciate, intent involves a person's
25 state of mind. And while this is a fact, it is a fact

1 tp

2 which it is impossible to prove by direct evidence,
3 short of an admission by a defendant. That is
4 because you cannot look in a person's mind and tell
5 what his intentions were.

6 Now, the question of intent was crucial
7 also in connection with the substantive counts. And
8 when I discuss intent at this point, when we are
9 dealing with the conspiracy count, you will take it as
10 applicable to the matter of the substantive counts as
11 well, but I will deal with the question of intent all
12 at one time.

13 Like any other fact, intent can be proved by
14 circumstantial evidence, and proof of the circumstances
15 behind a transaction may supply an adequate and convincing
16 basis for finding the intent of a defendant.

17 For example, you may consider in deter-
18 mining whether a defendant acted with guilty knowledge
19 or intent the fact, if you find it to be a fact, that he
20 engaged in another transaction similar to that charged
21 in the indictment. Such evidence as to a similar trans-
22 action should not be considered as showing that a defendant
23 has a generally bad character, but only whether if you
24 find that a defendant engaged in a similar trans-
25 action this is circumstantial evidence of the intent
which is an element of the offense charged.

2 Intent in the context of this case involves
3 primarily whether Torrez and Perez knew that Rosado
4 and Rivera were not entitled to buy food stamps with
5 the AWP cards they presented.

6 The government says that they did know this;
7 the defendants, by their plea of not guilty, deny that
8 they did.

9 Guilty knowledge cannot be established by
10 proof of neglect or carelessness, but it is not necessary
11 that the government prove to a certainty that these
12 defendants knew any given fact or facts. The element
13 of guilty knowledge may be satisfied by proof of a con-
14 scious avoidance of learning the truth. One may
15 not deliberately close his eyes to what otherwise
16 would have been perfectly obvious.

17 Now, I referred a moment ago to circumstan-
18 tial evidence. There are two kinds of evidence,
19 direct evidence and circumstantial evidence. Per-
20 haps I should say, and it will only be a few words
21 about this, direct evidence is where a witness testi-
22 fies to what he or she saw, heard, felt, observed, what
23 is known by virtue of the sense of sight or hearing,
24 for example.

25 Circumstantial evidence, on the other hand,

78a

qta2

1 is evidence of facts and circumstances from which
2 one may infer connected facts which reasonably follow
3 in the common experience of mankind.
4

5 In this building we usually take a simple
6 example of circumstantial evidence from the old
7 story of Robinson Crusoe. You remember how Crusoe
8 one day saw footprints in the sand on the beach.
9 Now, Crusoe did not see a man walking on the beach, but
10 from the fact of the footprints he inferred that a
11 man had been walking on the beach in fact.

12 That's about all there is to circumstan-
13 tial evidence. You infer on the basis of reason and
14 experience from an established fact the existence of
15 some related fact.

16 Now, finally we get to the question of
17 what is an overt act. An overt act is any step,
18 action or conduct which is taken to achieve, accomplish
19 or further the objects of the conspiracy.

20 The purpose Congress had in mind when it
21 made an overt act an element of the offense is that
22 while persons may conspire and combine to do an unlawful
23 act, yet they may change their minds and do nothing
24 to carry out the combination or agreement, and if they
25 do nothing to carry out the combination or agreement,

79a

1 gta3

2 then it will not constitute an offense.

3 And of course it is not necessary that an
4 overt act itself be criminal action or conduct taken
5 to achieve the object of the conspiracy. And it
6 does not make any difference that an overt act as claimed
7 in the indictment or alleged in the indictment to have
8 taken place on one date and you find it took place on
9 some other date, if you find that it occurred on or
10 about the date specified, that is sufficient.

11 Now, the guilt of a conspirator is not
12 governmentd by the extent or duration of his participa-
13 tion in the conspiracy nor whether he had knowledge of
14 all of the **operations of the conspiracy**. Thus, some
15 conspirators may play major roles and some may play
16 less important roles. Nor is it required that each
17 conspirator know all of the members of the conspiracy
18 or all of their activities.

19 Now, I think I have covered the charge of
20 conspiracy in the first count, and having done so, I
21 must return for just a moment to the three sub-
22 stantive counts, counts 2, 4 and 6.

23 Under some situations the government is
24 not required to prove that a defendant individually
25 committed a substantive offense.

1 gta4

80a

2 If you have found a conspiracy to exist
3 as charged in count 1, then to find a particular defend-
4 ant guilty under the substantive counts, 2, 4 and 6, you
5 need not necessarily find that he actually and individu-
6 ally committed the substantive offense.

7 If you find beyond a reasonable doubt that
8 the substantive offense alleged in counts 2, 4 and 6
9 was in fact committed by one or more members of the
10 alleged conspiracy, that the defendant whose guilt you
11 are considering was then a member of that conspiracy
12 and that the act which constituted that offense was
13 done in furtherance of the conspiracy, then you may
14 find that particular defendant guilty of the offense
15 charged in any of the counts 2, 4 and 6 even though
16 he did not participate in the acts constituting that
17 offense or even did not have knowledge of it.

18 This result follows from the nature of a
19 conspiracy. The criminal intent to do the act is
20 established by the formation of the conspiracy. The
21 unlawful agreement, the conspiracy, contemplated the
22 act which was done. The act was done in execution
23 of the enterprise.

24 Since the government contends that all de-
25 fendants, including Torrez and Perez, were members

1 qta5

2 of the conspiracy, the government further contends that
3 by reason of the conspiracy principle just explained
4 the defendants Torrez and Perez are guilty of the sub-
5 stantive offenses charged in counts 2, 4 and 6.

6 Now, Madem Foreman, ladies and gentlemen
7 of the jury, you will be glad to know that we are
8 getting to the end of these instructions, which have
9 been necessarily long. But before submitting
10 the case to you I must say something about the
11 credibility of witnesses.

12 Of course, it is you, the jury, who pass
13 on the credibility of all witnesses, and you do that
14 by using your common sense and drawing on your experience
15 in meeting and dealing with people in your everyday
16 business and social lives.

17 You heard the witnesses. Were they frank,
18 open, candid, truthful? How did each witness strike
19 you?

20 And so you weigh them on your scales.
21 You may consider whether a witness has some interest
22 in the case or motive which might affect his or her
23 testimony. If so, you may consider this in weighing
24 credibility.

25 An interested or motivated witness is not

1 gta6

2 necessarily unworthy of belief, it is only a factor
3 to be considered by you in determining what weight to
4 give the testimony.

5 The law does not require a defendant in
6 a criminal case to take the witness stand and testify
7 and no presumption of guilt may be raised and no in-
8 ference of any kind may be drawn from the failure of
9 a defendant to testify.

10 One of the defendants, Perez, called a
11 witness or witnesses who testified to his reputation
12 in the community for truth and for honesty. These
13 are often called character witnesses, although you
14 appreciate they are testifying to reputation rather
15 than to character.

16

17

18

19

20

21

22

23

24

25

jkai

You should consider the evidence of reputation for a trait of character together with all the other evidence in determining the guilt or innocence of the defendant calling such character witnesses. Evidence of good reputation for a relevant trait may in itself create a reasonable doubt, where without such evidence there would be no reasonable doubt.

But if from all the evidence you are satisfied that the defendant calling such witnesses is guilty, a showing that he previously enjoyed a good reputation for truth and for honesty or for both is no excuse or defense, and you should not acquit him merely because you believe he has been a person of good repute in these respects.

16 There has been evidence that some defend-
17 ants have pleaded guilty to some of the charges con-
18 tained in this indictment. No inference as to the guilt
19 or innocence of the two defendants here on trial may
20 be drawn from that fact. Whether any of the other
21 defendants pleaded guilty to one or more of the
22 charges contained in this indictment has nothing to
23 do with whether the defendants here on trial are guilty
24 or not guilty.

Now, you saw that the government called

84a

jka2

as witnesses Jose Rosado and Joseph Rivera who openly admitted their involvement in the offenses here charged and their wrongdoing. In the eyes of the law they are accomplices in the same offenses charged against the defendants here on trial.

In the prosecution and detection of crime the government, of necessity, is frequently compelled to rely on the testimony of accomplices. Often it has no choice in the matter. The government must take the witnesses to a transactions as they are.

An accomplice does not become incompetent as a witness because of his participation in the criminal act charged. If accomplices could not be used in many instances it would be difficult, if not impossible, to detect and prosecute wrongdoers, and this is particularly true in conspiracy cases. Frequently it happens that only those who participate have evidence which is relevant and important in a case if a prosecution is to succeed.

There is no requirement in the federal courts that the testimony of an accomplice be corroborated. A conviction may rest on the uncorroborated testimony of an accomplice, if you find it credible and believable.

1 jka3

2 In this instance you will understand that
3 the government does claim corroboration as to various
4 portions of the testimony of the accomplice witnesses
5 and claims such corroboration from independent proof,
6 by other testimony and by documentary evidence.

7 The fact that a government witness is an
8 accomplice may be considered by you as bearing on his
9 credibility.

10 However, it does not follow that because
11 a person has acknowledged participation in a crime or
12 is an accomplice that he is not capable of
13 giving a truthful version of what occurred. The
14 testimony, however, should be viewed with great caution
15 and scrutinized carefully.

16 You will consider whether the testimony
17 was inspired by any motive of self-interest, personal
18 advantage or hostility to a defendant so that he gave
19 false or colored testimony.

20 You will consider whether the testimony
21 was a fabrication, induced by a belief that as a result
22 of that testimony he will receive favorable considera-
23 tion by the government. Or you will consider whe-
24 ther the witness bared himself publicly and made a
25 clean breast of it and told the truth. In short,

1 jka4

2 did he decide, after being caught, to come clean and
3 tell the truth?

4 If you find that the testimony of these
5 accomplices was deliberately untruthful you should
6 reject it.

7 On the other hand, if upon a cautious and
8 careful examination you are satisfied that Jose Rosado
9 and Joseph Rivera have given truthful versions, and
10 that the government has maintained and sustained its
11 burden of proof in all other respects as outlined in
12 these instructions, then you have sufficient proof upon
13 which to bring in a verdict of guilty.

14 Now, at the conclusion of these instructions
15 I have to say to you that each juror is entitled to
16 his or her own opinion. You should, however,
17 exchange views among yourselves, each with his or her
18 fellow jurors. That is the very purpose of jury de-
19 liberation, to discuss and consider the evidence, to
20 listen to the views and arguments of fellow jurors,
21 to present your own individual views, to consult
22 with one another, and to reach an agreement based solely and
23 wholly on the evidence, if you can do so without violence
24 to your own individual judgment.

25 Each one must decide the case for himself

1 jka5

2 or herself. But you should not hesitate to change
3 an opinion which after discussion with your fellow
4 jurors appears to be mistaken in the light of the dis-
5 cussion viewed against the evidence and the law.

6 However, if after carefully considering
7 everything you entertain a conscientious view which
8 differs from the others, you should not yield your con-
9 victions because you are outnumbered or outweighed.

10 Your final vote must reflect your conscien-
11 tous conviction as to how the issue should be decided.

12 Members of the jury, any verdict must be
13 unanimous, that is, as to each defendant and on each
14 count the verdict must be unanimous.

15 The jury should not consider or in any way
16 speculate about the punishment which a defendant may
17 receive if he is found guilty. Under your oath as
18 jurors you cannot allow a consideration of the punish-
19 ment which might be imposed upon a defendant if he is
20 convicted to influence your verdict in any way or to
21 enter into your deliberations.

22 The function of a jury is to determine the
23 guilt or innocence of a defendant on the basis of the
24 evidence and the instructions of the presiding judge.

25 It is the judge alone who has the respon-

88a

jka6

sibility and the duty of determining the sentence, if there is a conviction.

The charges here, Madam Foreman, ladies and gentlemen of the jury, are most serious. A just determination of this case is important to the public. It is equally important to each of these two defendants. Under your oath as jurors you must decide the case without fear or favor and solely in accordance with the evidence and the law.

If the government has failed to carry its burden as to any count or counts as to a defendant, your sworn duty is to bring in a verdict of not guilty on such count or counts.

If the government has carried its burden as to any count or counts as to a defendant, you must not flinch from your sworn duty, but you must bring in a verdict of guilty on such count or counts.

The guilt or innocence of the defendants is for you and you alone to determine.

The government, to prevail, must prove the essential elements as I explained them by the required degree of proof. If it succeeds, as I just said, your verdict must be guilty. If it fails, your verdict must be not guilty.

1 jkpl

7B

2 The case of each defendant must be con-
3 sidered separately, as if he alone were on trial.

4 Thus, there are various possible verdicts.
5 You may find each defendant not guilty. You may find
6 each guilty. Or you may find one guilty and the other
7 not guilty, as the case may be, or you may find a
8 defendant guilty on one count and not guilty on another
9 count or counts.

10 I am not suggesting any of these alternatives
11 to you. I am merely trying to make it crystal clear
12 that you must consider the guilt or innocence of each
13 defendant separately and that each count of the indictment
14 must be considered separately as to each defendant.

15 Now, I am giving to Madam Foreman a form to be
16 used simply as a guide for returning your verdict on each
17 count as to each defendant. This form is not to be signed.
18 It is only for your convenient use.

19 Your verdict will be returned orally by your
20 foreman in open court and it goes without saying that this
21 form is not intended to nor should it in any way influence
22 your verdict.

23 And as promised, I am also giving to Madam
24 Foreman a copy of the relevant parts of the indictment.
25 The copy of the indictment is simply for your convenient

1 jkp2

2 use, and you will bear in mind that it is merely the
3 charge, it is not evidence.

4 Madam Clerk, will you give these to the
5 foreman?

6 THE CLERK: Yes, Judge.

7 (Handed to foreman.)

8 THE COURT: If during your deliberations you
9 wish to see any of the exhibits, the foreman should send
10 out a note by the marshal. We will send in the requested
11 exhibits to you.

12 If you should wish any testimony read to you,
13 likewise, Madam Foreman should send a request through
14 the marshal and your request will be considered and if
15 granted, arrangements will be made.

16 Now, members of the jury, you have been most
17 attentive and most patient, and I would ask that you wait
18 for just a moment, a few moments in the courtroom, in
19 your seats in silence, while I see counsel in the robing
20 room with the reporter for any last-minute questions of
21 law, and then we will submit the case to you for your
22 decision.

23 I will see counsel and the reporter in the
24 robing room.

25 (n robing room.)

jlp3

1 THE COURT: Mr. Weinberg, any exceptions?

2 MR. WEINBERG: None at all, your Honor.

3 THE COURT: Mr. Gotkin?

4 MR. GOTKIN: Just this, your Honor, I have
5 just one exception as to your charge on similar trans-
6 action, your Honor. I feel that, No. 1, as I originally
7 stated throughout the whole trial, it doesn't belong in
8 the case; No. 2, even assuming *arguendo* it did, I don't
9 feel the government has shown any similar transaction,
10 your Honor.
11

12 THE COURT: I understand. I remember, we had
13 this before.

14 MR. GOTKIN: Yes, your Honor, so I would
15 except to that part of the charge, your Honor.

16 THE COURT: Okay.

17 Mr. Shaw?

18 MR. SHAW: Yes, your Honor.

19 If your Honor will permit, I would like to
20 explain some of my exceptions, and I must say that this
21 charge, although it took over two hours, I think that the
22 jury was very attentive and paid attention to it.
23 It is a credit to your Honor. It was a very difficult
24 area. In fact, I can see your Honor did some research
25 over the weekend, I think taught all the lawyers a little

1 jkp4

2 bit more about this case.

3 THE COURT: Any my law clerk, too. He was
4 in on Saturday.

5 MR. GOTKIN: I would join in that, your
6 Honor, most wholeheartedly.

7 MR. SHAW: The first thing I would like to do
8 also is to thank your Honor with regard to the controversy
9 with counsel and not only did your Honor cover it, but I
10 think you were most generous, and I want to put on the
11 record you weren't impatient, really, Judge.

12 THE COURT: But I am short-fused, but I get
13 it over with and it doesn't stay with me. But you would
14 be surprised how many cases I have to give this in-
15 struction.

16 MR. SHAW: When I asked for it, I thought it
17 was necessary, but thereafter --

18 THE COURT: It is just my nature, so you can't
19 help that. Okay.

20 MR. SHAW: I really have that nature, your
21 Honor. I don't believe you do.

22 I have several objections; probably most of
23 them could be termed facetious.

24 THE COURT: You are entitled to put them on the
25 record, so go ahead.

jhp5

1
2 MR. SHAW: Okay. The first exception I have
3 is to the charge of head of eligible household. It
4 is my understanding that the law is that it is a member
5 of an eligible household, and in regard to the word
6 "head," I except to the word "head."

7 May I continue, your Honor?

8 THE COURT: Well, I think I read the
9 regulations carefully. I don't know, do you remember?
10 Do you have the regulations?

11 MR. GOTKIN: I have them here, your Honor,
12 I believe, the definition of head.

13 MR. WEINBERG: Mr. Shaw, in what context?

14 MR. GOTKIN: I have eligible household.

15 THE COURT: Well, the head of the eligible
16 household or his authorized representative shall sign
17 each book of coupons.

18 MR. SHAW: Your Honor, I except to that in
19 that regard.

20 THE COURT: I will have to just assume that
21 if I did my work properly I am right, but I think it will
22 take so long to look it up that I can't do it.

23 MR. SHAW: Your Honor, in regard to the
24 Count No. 2, your Honor may deem this more proper as a
25 Rule 29 motion, but I respectfully except, especially

1 jkp6

2 in regard to the alter. I do not believe that the
3 government proved that my client ever altered anything.

4 THE COURT: I don't think I charged that.
5 I left out alter. I think I took that into account.
6 I agree with you, and I don't think I ever suggested
7 that that was in the case.

8 MR. SHAW: Yes, your Honor.

9 In regard to the knowingly and wilfully,
10 on that charge of the mens rea or scienter, I again, just
11 for the record, indicate that I wanted your Honor to
12 repeat that explanation throughout the charge, and we
13 had had a discussion on Friday morning where you said you
14 wouldn't and the government -- do you recall that, Mr.
15 Weinberg, that I made that exception on Friday morning?

16 THE COURT: You mean as to each count?

17 MR. SHAW: I had wanted that done and your
18 Honor had ruled you would only do it once.

19 MR. WEINBERG: I think your Honor made it
20 clear that it applied to each count.

21 MR. SHAW: He definitely did.

22 THE COURT: I only did it, I thought, to save
23 time.

24 MR. SHAW: I can see your Honor's point.

25 THE COURT: But I don't know -- however, I

1 jkn7

2 have done it now.

3 MR. SHAW: I felt the aiding and abetting
4 was a very good charge.

5 Oh, your Honor, in regard to Count No. 6,
6 the charge as to any claim filed, I respectfully except
7 to it as to Mr. Perez with regard to the time period of
8 the indictment. Since Miss Grant sent a letter on
9 September 12, 1975, to Mr. Rosado, the time period for
10 that particular count should start September 1, '75,
11 at the earliest, and not 6/1/75, because all previous
12 claims had been approved by the investigation and
13 acceptance of his explanations. That may sound very
14 technical, but --

15 THE COURT: I can't agree with you on that,
16 and I don't think that Miss Grant entered the formal
17 order. I don't think she can bind the United States
18 Government.

19 MR. SHAW: Your Honor, I would ask that in
20 regard to the conspiracy that your Honor charge the jury
21 that, one, they must determine if he joined, and second,
22 whether or not it was a chain conspiracy, so to speak,
23 or a spoke conspiracy a la Kotteakos, a wheel spoke.

24

25

1 tp

3A

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

tp

THE COURT: I recognize your point, but I don't accept it.

MR. SHAW: Your Honor, I would just say this:

I think that when you made the charge in regard to intent, that in order to wake up the jury you might have given that charge a little louder, and I don't think it was to the benefit of my client when you said one can't close his eyes to what one would otherwise see was obvious, but I don't think it was intentionally done by your Honor. It was at a point when the jury was tired.

THE COURT: You mean I didn't speak that loud enough?

MR. SHAW: Oh, you did at that point. You spoke too loud for my taste.

THE COURT: Well, I was taking it from that Hanlon case that I cited to you. That was a sentence in Judge Pollack's charge which the Court of Appeals was reviewing in that case and which they seemed to have approved, so I read that part of the charge with the Hanlon slip opinion in front of me.

MR. SHAW: I recall. We discussed that also, your Honor.

THE COURT: Yes.

1 tp

2 MR. SHAW: I except to that part of the
3 charge.

4 I except, also, as we discussed Friday
5 morning, to the fact that your Honor is not going to
6 charge that the government had a right to rebut any
7 character evidence, because the character is an issue.

8 I would respectfully request the Court to
9 advise the jury that on credibility -- I am talking now
10 about the government's witnesses -- that if you dis-
11 believe any part of their testimony, they have the right
12 to disbelieve all of the testimony.

13 THE COURT: All right. I will give that.

14 MR. SHAW: And last but not least, your Honor,
15 because I know our time is moving, I would ask your Honor
16 to advise the jury as you said you would to Mr. Gotkin
17 and I, which I think is a good idea, to let them know
18 that they are going to go home at 6 o'clock for reasons
19 of safety on the subway or whatever your Honor chooses.

20 THE COURT: Yes, I will.

21 MR. WEINBERG: Your Honor, I am not certain,
22 but I think the charge that Mr. Shaw just referred to,
23 I think your Honor did give something along those lines.

24 MR. GOTKIN: No, I don't believe you did.

25 THE COURT: We didn't have that.

1 tp

2 MR. SHAW: I know your Honor is writing now,
3 but I think the record should, again, be explicit if
4 this case does ever go up, that despite the fact that
5 I have made these exceptions, I still stand by my original
6 comments that I think that your Honor did an excellent
7 job considering the time involved in the charge.

8 THE COURT: But we can all make mistakes and
9 you are certainly right to make your record.

10 MR. SHAW: Thank you, your Honor.

11 THE COURT: All right. I will have to give it
12 from memory. It may not be letter perfect.

13 Okay.

14 MR. SHAW: Thank you, your Honor.

15

16

17

18

19

20

21

22

23

24

25

T#8b 1

atal

2

MR. WEINBERG: Would your Honor just let me

3

say that during the recess Mr. Burke, who works for

4

the Department of Agriculture, informed me that he had

5

never heard a clearer statement of how the Food Stamp

6

Act is supposed to work than your charge. I think

7

I am going to distribute it to the agents over there.

8

THE COURT: That makes me feel good.

9

MR. SHAW: He also was very complimentary

10

about the federal court vs. the state court in his

11

vast experience there.

12

MR. WEINBERG: Mr. Burke's experience

13

has been as a New York City police officer. This

14

has been his first experience in federal court, and

15

he had many complimentary things to say.

16

THE COURT: As you know, it is a very hard

17

job and sometimes a few boquets can't do any harm.

18

(In open court.)

19

THE COURT: Members of the jury, I must

20

add one further instruction to you having to do with

21

the credibility of witnesses.

22

If you find that any witness has deliberately

23

testified falsely as to any material fact, you may reject

24

all of the testimony of that witness, or you may accept

25

such parts of the testimony as you believe and as you

1 gta2

2 find are corroborated by other testimony and other
3 evidence.

4 Madam Clerk, will you swear the marshals.
5 (Marshal duly sworn.)

6 THE COURT: Madam Foreman and ladies and
7 gentlemen of the jury, the case is submitted to you
8 for your decision.

9 Before you go with the marshal to the jury
10 room I want to make an administrative explanation.

11 As you begin your deliberations you should
12 know that whether you have reached a verdict or not
13 by 6 o'clock I am going to let you go home and spend
14 the night, and if you have not reached a verdict by
15 that time, I will ask you to come in tomorrow morning
16 at 9:30 and resume your deliberations.

17 I say this because it is now 10 minutes
18 after 4, and as you approach your responsibilities I
19 don't want you to feel compelled from personal neces-
20 sity or convenience to hurry or to feel under any pres-
21 sure, and we don't like normally to keep juries here
22 after 6 o'clock. It is dark then. And particu-
23 larly when we have ladies on the jury we don't think
24 normally it is a good idea to have them returning to
25 their homes very late at night.

United States of America vs.

JUDGMENT
(Filed March 28, 1977) **United States District Court** for

101a

SOUTHERN DISTRICT OF NEW YORK

DEFENDANT

ISHMAEL SUAREZ-TORREZ a/k/a
"Eddie"

DOCKET NO. 76 CR. 1045 (IBW)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, Richard Weinberg, AUSA
the defendant appeared in person on this date

MONTH DAY YEAR
March 28, 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Martin Gotkin, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

FINDING &
JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

unlawfully, wilfully and knowingly using and possessing authorization to purchase cards, stealing and knowing converting to his use and to the use of another, and without authority,

Defendant has been convicted as charged of the offense(s) of did sell, convey and dispose of records, vouchers, moneys and making false, fictitious and fraudulent claims to the United States Department of Agriculture to pay for the value of food coupons and conspiring to do so.

(Title 18, United States Code Sections 2, 371, 287 & 2 and 641 & 2.),
(Title 7, United States Code Section 2023(b).)

as charged in cts. 1, 2, 4 & 6

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **THREE (3) MONTHS** on each of Counts 1, 2, 4 & 6 to run concurrently with each other.

SENTENCE
OR
PROBATION
ORDER

The defendant is to surrender on March 31, 1977 at 10:30 A.M. in Room 506 (Part 1).

The defendant's present bail of \$2,000 PRB is continued until the date of surrender.

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT
RECOMMEN-
DATION

MICROFILM

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

Inzer B. Wyatt, U.S.D.J.

Date 3-28-77

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

28

MINUTES OF HEARING OF JANUARY 27, 1977
(pp. 102a-124a)

1 MKP

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 UNITED STATES OF AMERICA :

6 vs :

76 Crim 1045

7 ISHMAEL SUAREZ TORREZ, a/k/a :

8 "Eddie", :

9 Defendant. :

-----X

10

11 New York, N. Y.

12 January 27, 1977 - 9:30 a.m.

13 Before

14 HON. INZER B. WYATT,

15 District Judge.

16

17 APPEARANCES:

18

19 ROBERT B. FISKE, JR., Esq.,
20 United States Attorney for the Southern District
of New York

21

22 RICHARD WEINBERG, Esq.,
Assistant United States Attorney

23

24 MARTIN GOTKIN, Esq.,
25 Attorney for Defendant

26

27

28

1 MP

2 THE CLERK: United States of America against
3 Ishmael Torres.

4 Is the Government ready?

5 MR. WEINBERG: The Government is ready.

6 THE CLERK: Is the defendant ready?

7 MR. GOTKIN: Ready, your Honor.

8 THE COURT: What is this about? Do we need an
9 interpreter?

10 MR. GOTKIN: Well, if I may be heard on this, your
11 Honor, Mr. Torres speaks English all right. He understands
12 it. However, I have made an application for an interpreter
13 for the purpose of translating certain tapes that were in
14 Spanish, and your Honor granted that motion.

15 Now, Mr. Ras, who is the official court interpreter,
16 has been working with me on the translations, and he is there
17 in that connection. There are certain discrepancies between
18 his translations and the translations made by the Government
19 interpreter. That is the first phase.

20 The second phase is that although my client does
21 speak and understand English, your Honor, there are certain
22 words that he may not understand at the trial, and I would
23 like Mr. Ras here as interpreter during the trial also.

24 THE COURT: All right; and if he needs to consult
25 Mr. Ras, Mr. Ras is available. Let us swear him, then.

1 MP

2 (Manuel Ras was duly sworn as Spanish-English
3 interpreter.)

4 THE COURT: What do we have next?

5 MR. WEINBERG: Your Honor, at the trial next week,
6 in which Mr. Torrez is a defendant, the Government intends
7 to introduce several tape recordings of conversations between
8 the deeendant and a cooperating Government witness -- a
9 cooperating defendant.

10 Those tapes are in Spanish. We therefore have had
11 a translation made of those tapes, and I am going to offer
12 the transcripts into evidence. The transcripts are not very
13 long; we are not talking about very long conversations.

14 THE COURT: All right.

15 MR. WEINBERG: During the course of some of these
16 conversations there is discussion between Mr. Torrez and the
17 Government witness about another scheme concerning blank money
18 orders that Mr. Torrez engaged in with the Government witness.

19 Your Honor, Mr. Gotkin, on behalf of Mr. Torrez,
20 has asked the Government to delete those references, but the
21 Government does not believe that we should be required to de-
22 lete those references.

23 First of all, your Honor, the reference to these
24 money orders is part of the conversation which is very rele-
25 vant to this case, concerning the illegal sale and use of

1 MP

2 authorization-to-purchase cards and food stamp coupons. So
3 we are not in any way talking about bringing before the jury
4 any conversations of similar acts, similar bad acts, on the
5 part of the defendant.

6 In addition, your Honor, the testimony or any refer-
7 ences in the transcripts to the money order scheme I believe
8 would be probative of the defendant's intent.

9 I think from my discussions with Mr. Gotkin -- and
10 I think I have been pretty open with him about the Government's
11 case, and he has been reasonably candid with me about the
12 defendant's -- it is clear that the defense in this case is
13 going to be one of intent.

14 Mr. Torrez will argue that although the evidence --
15 the acts that the Government claims, he did, he did not know
16 there was anything wrong or illegitimate or illegal or any-
17 thing or that the ATP cards that Mr. Rosado was giving him
18 were stolen.

19 Your Honor, since this is going to be the basic
20 issue in the case, the Government is entitled, as part of the
21 same conversation, where the defendant is talking about food
22 stamp coupons and ATP cards, to have before the jury this
23 additional testimony about a similar scheme that this defend-
24 ant had with Mr. Rosado, in which this defendant would sell
25 to Mr. Rosado blank money orders, and then, this defendant,

1 MKP

2 working at the check-cashing place, would put down on the
3 records that the value of that money order wa two dollars,
4 and then Mr. Rosado would dispose of these blank money orders
5 inan amount in excess of two dollars, that would be written
6 onto the blank money order.

7 THE COURT: Postal money orders?

8 MR. WEINBERG: Yes, your Honor. I am sorry, your
9 Honor. I'm not sure if they were Postal money orders or
10 American Express money orders.

11 MR. GOTKIN: American Express.

12 THE COURT: American Express Travelers Cheques?

13 MR. WEINBERG: Money orders, your Honor.

14 THE COURT: What is an American Express money order?

15 MR. GOTKIN: Judge, can I be heard if Mr. Weinberg
16 is finished?

17 THE COURT: Is this the only issue before me this
18 morning?

19 MR. WEINBERG: I believe so, your Honor.

20 There is a reference in the transcript to a counter-
21 feit \$100 bill that Mr. Torrez tells Mr. Rosado during the
22 conversation, that Mr. Rosado had previously given him a \$100
23 counterfeit bill.

24 The Government has no objection to deleting that
25 particular reference from the transcript.

1 MKP

2 THE COURT: All right, Mr. Gotkin.

3 MR. GOTKIN: Yes, your Honor.

4 First of all, Mr. Weinberg has completely distorted
5 the facts or the facts that he is trying to create in the
6 case.

7 Now, we are defending a client who is accused of
8 some fraud, pursuant to the Agricultural Act. Mr. Weinberg
9 comes in with some kind of a phony scheme about stolen money
10 orders, your Honor. This has nothing to do with the case.

11 THE COURT: Certainly, it has. It is a similar
12 act.

13 MR. GOTKIN: Respectfully, your Honor --

14 THE COURT: Of course it has relevance.

15 MR. GOTKIN: Your Honor, how is a money order
16 similar to ATP cards for food stamps?

17 THE COURT: Because it is an instrument for the
18 payment of money.

19 MR. GOTKIN: Judge --

20 THE COURT: It seems to me to be perfectly proba-
21 tive.

22 MR. GOTKIN: Judge, I would ask the Court to do
23 this: the main tape that this is contained on is the tape of
24 September 27, 1976. It is clear from a reading of that
25 transcript that the wearer of the body tape, the Nagra tape

1 MKP

2 -- I guess it was a Nagra recorded -- was trying purposely
3 to interject continuously this business about the money orders,
4 and it looks like it is really related to the food stamps, but
5 what happened here, Judge, the evidence will come out that
6 what Mr. Rosado did, he went to the back of the check-cashing
7 place where Mr. Torrez was employed -- he was just an employee
8 -- and he stole the money orders himself. He put in the
9 blank amounts. Mr. Torrez had nothing to do with this,
10 Judge.

11 THE COURT: Well, I think it is a question for the
12 jury. In other words, it is not a similar crime. The
13 Government says it is.

14 MR. GOTKIN: But, your Honor, it is so outrageously
15 prejudicial --

16 THE COURT: But if he is innocent of it, and you
17 say the evidence shows he is innocent of it, it cannot
18 possibly be prejudicial.

19 MR. GOTKIN: But, Judge, I am not here defending
20 him with regard to the money orders. I am here with regard
21 to the food stamp case. I now have to meet the issue of the
22 money orders. What happened here --

23 THE COURT: Because it has to do, and I cite you
24 to McCormick, on page 450, that evidence of such similar
25 acts is to show, by similar acts or incidents, that the act

1 MKP

2 on trial was not inadvertent, accidental, unintentional or
3 without guilty knowledge. You are suggesting that I ought to
4 pass on what the fact is.

5 do you have the transcript here?

6 MR. GOTKIN: Yes.

7 THE COURT: Perhaps if I take a look at it --

8 MR. GOTKIN: Will you do that, if your Honor please?

9 You will see what I am trying to get at.

10 (Pause.)

11 MR. GOTKIN: Do you have September 27th?

12 MR. WEINBERG: Yes; I do (handing).

13 MR. GOTKIN: Could we go down it together, your
14 Honor, outloud, and I can point this out to you?

15 THE COURT: Yes. Where is it?

16 MR. GOTKIN: It starts on -- well, the first part
17 is about the \$100 bill.

18 All references, I understand, to the \$100 bill are
19 going to be deleted; is that correct, Mr. Weinberg?

20 MR. WEINBERG: Yes.

21 THE COURT: I understood Mr. Weinberg to say that.

22 I suppose there are only three lines about the
23 \$100 bill.

24 MR. GOTKIN: No, your Honor. There is a lot more
25 about that.

1 MKP

2 THE COURT: " . . . the one hundred bill, give them
3 to me."

4 Those three lines are out?

5 MR. GOTKIN: Yes, but later on they keep going back
6 to the \$100 bill, Judge.

7 Could we go line by line on this, your Honor?

8 THE COURT: The three lines that I read, they go
9 out, do they?

10 MR. WEINBERG: That is correct, your Honor.

11 THE COURT: All right.

12 MR. GOTKIN: That is the one hundred dollar bill.
13 That is out, Judge.

14 THE COURT: That is out, those three lines, yes.

15 MR. GOTKIN: And, of course, "give me the one
16 hundred dollar bill" --

17 THE COURT: I don't see any such language. I said
18 there are three lines:

19 "ROSADO - the one hundred dollar bill, let me see
20 it".

21 "EDDY - What?"

22 "ROSADI - the one hundred dollar bill, give them
23 to me."

24 Those three lines are out.

25 All right. Now, let us go on. Where do we get to

1 MKP

2 another problem, Mr. Gotkin?

3 MR. GOTKIN: We get to another problem on the trans-
4 cript --

5 THE COURT: No. You got to the line "ROSADO - the
6 one hundred dollar bill, give them to me", which is out.

7 Mr. Weinberg, is that right?

8 MR. WEINBERG: Yes, your Honor.

9 THE COURT: All right. That line is out. Then it
10 says, "EDDY - (unintelligible) (pause, music in the back-
11 ground)", and then he says, "are you taking one hundreds?"

12 Is that out?

13 MR. WEINBERG: The Government would not consent to
14 taking that out, your Honor. I believe they are now starting
15 to talk about the food stamps, the ATP's and the money orders.

16 THE COURT: All right.

17 "are you taking one hundreds?"

18 "ROSADO - Yes.

19 "EDDY - Then."

20 Then when do we get to a problem?

21 MR. GOTKIN: Here, your Honor.

22 "EDDY - The photostatic copy -- because they were
23 blank when they left this office."

24 Now are you talking about the money orders that
25 were blank, that is, money orders, and then Rosado says,

1 MKP

2 "they were erased".

3 "EDDY - Huh? No. The checks were not erased.
4 Then, if they were blank when they left here, I have to know
5 who took them.

6 "ROSADO - But don't put it this way" --

7 THE COURT: Who is Eddy?

8 MR. WEINBERG: Eddy is Mr. Torrez, your Honor.

9 MR. GOTKIN: He is the defendant.

10 THE COURT: I see.

11 MR. GOTKIN: And then Rosado says, "don't put it
12 this way -- that you sold them, and you don't know anything
13 else".

14 Eddy says, "they were not erased."

15 Rosado, "You say that you don't know nothing, that
16 you -- that they were sold, brother, that you know that they
17 were sold, nothing else. You give them the story, that's it.
18 Nothing else. You tell them the story. They were sold. They
19 were sold here. you explain to them the whole story and
20 nothing else, and you stick to your story."

21 Now, Judge, this is a disaster.

22 THE COURT: Well, that isn't a reason for excluding
23 it.

24 MR. GOTKIN: Well, your Honor, it so clearly has
25 nothing to do with the case, and clearly what is happening

1 MKP

2 here is that Mr. Rosado is purposely interjecting this to make
3 it look like they were talking about some nefarious act re-
4 lating to the food stamps.

5 MR. WEINBERG: Your Honor, it is clear from the
6 transcript that Mr. Torrez brings up the subject of the money
7 orders first, from what was read on the first page of the
8 transcript.

9 MR. GOTKIN: Because he was concerned that they
10 were stolen by Mr. Rosado.

11 MR. WEINBERG: I am only responding to Mr. Gotkin's
12 accusation that Mr. Rosado was trying to interject this into
13 the conversation

14 THE COURT: Is this the whole conversation about
15 the money orders?

16 MR. GOTKIN: Yes, the whole of page 2 is money
17 orders and the \$100 bill.

18 MR. WEINBERG: That is not true, your Honor. In
19 the middle of the page --

20 MR. GOTKIN: Oh, yes.

21 MR. WEINBERG: -- that is where Mr. Rosado and Mr.
22 Torrez are talking about the ATP cards and the food stamps,
23 where the numbers appear.

24 MR. GOTKIN: That is true, Judge; I am sorry.
25 Where it says in the middle, "Rosado - No, it's no good so

1 MKP

2 much counting, man (unintelligible)."

3 That whole paragraph is relating to food stamps,
4 your Honor. The money they were counting that Rosado gave
5 to the defendant -- just that paragraph, Judge. Everything
6 else is about the food stamps or the \$100 bill.

7 THE COURT: Down there where Rosado says, "this
8 bill is bad. Look at this one hundred dollars. It cannot
9 be passed to anybody" -- that's out?

10 MR. WEINBERG: That's out, your Honor.

11 THE COURT: All right. Let us mark that. And then
12 he says, "when I saw it -- that bill, I said it's no good!".

13 I take it that is out?

14 MR. WEINBERG: That is right, your Honor.

15 THE COURT: And the next line is out?

16 MR. WEINBERG: Yes.

17 THE COURT: Now, the line, "If they have not erased
18 them, they are going to send me an investigator over here" --

19 MR. GOTKIN: That is money orders.

20 MR. WEINBERG: That is money orders, your Honor.

21 THE COURT: All right. The first two lines on the
22 last page, page 2, of Eddy are out.

23 MR. WEINBERG: That is correct, your Honor.

24 MR. GOTKIN: There is another reference to the
25 one hundred dollar bill a little further on, Judge.

1 MKP

2 THE COURT: Where?

3 MR. GOTKIN: In the middle, where it says, "It was in
4 your package. A bill like this, I don't take it."

5 THE COURT: On page 2?

6 MR. GOTKIN: Yes, Judge. In the middle.

7 THE COURT: Rosado says, "No, is this bill mine?"

8 Eddy says, "it was in your package . . . a bill
9 like this, I don't take it."

10 Rosado says, "neither do I. I don't check the
11 packages from the bank either".

12 MR. GOTKIN: That is out.

13 THE COURT: Is that out, Mr. Weinberg?

14 MR. WEINBERG: The Government will delete that,
15 your Honor.

16 THE COURT: Now, where do we begin?

17 "These bills, a bill like that has to be returned".
18 Is that out?

19 MR. WEINBERG: Yes, your Honor.

20 THE COURT: All right.

21 Eddy says, "you have to count your money".

22 Right?

23 MR. WEINBERG: That is correct, your Honor.

24 THE COURT: All right. Then, the next comes out,
25 the last statement of Rosado and the first two lines of the

1 MKP

2 statement of Eddy at the bottom of page 2.

3 Now, does that finish with the counterfeit bills?

4 MR. GOTKIN: Just one moment, your Honor.

5 (Pause.)

6 MR. GOTKIN: On this transcript, I believe it does,
7 Judge.

8 THE COURT: Mr. Gotkin, you and I differ about this.
9 I think the money order evidence is admissible, but I am pre-
10 pared to give instructions to the jury as to why it is ad-
11 missible, and that he is not on trial here for any offense
12 except in connection with food stamps.

13 It is better than nothing, but I won't exclude it.

14 MR. GOTKIN: I respectfully except.

15 THE COURT: Of course.

16 Now, Mr. Weinberg, I will return to you your copy
17 of the transcript.

18 I have indicated in brackets the material you told
19 me you will omit about the counterfeit \$100 bill.

20 As to the rest of it, I will rule that it is ad-
21 missible, and I will give them instructions, as I said.

22 MR. GOTKIN: Your Honor, there are other matters,
23 on another tape, on the tape of the telephone conversation of
24 9/27/76. According to the Government's translation there is
25 a line which says -- Eddy says, "You're in jail". Now, my

1 MKP

2 interpreter, Mr. Ras, independently, your Honor, did the
3 transcripts without even seeing the Government's transcript,
4 and his interpretation of that is not that, "You're in jail"
5 but that, "You're in trouble". I don't like that word
6 "In jail" in a criminal case, your Honor. I think we should
7 either delete it or put it as "In trouble".

8 THE COURT: What is the Spanish word for that?

9 MR. GOTKIN: The Spanish is "estas preso".

10 THE COURT: And the Government's translation is,
11 :You are in jail"?

12 MR. GOTKIN: "You are in jail".

13 THE COURT: Well, I am far from a Spanish expert,
14 but normally the word for "jail" is "carcel".

15 Is the interpreter here?

16 MR. WEINBERG: No, your Honor. The interpreter
17 who made this is in Washington, D. C. He will be in New York
18 tomorrow, your Honor, and I will be happy to ask him to
19 check it.

20 THE COURT: Maybe he and Mr. Ras could exchange
21 views by telephone.

22 MR. WEINBERG: I don't see that this will be a
23 problem.

24 THE COURT: I would not attempt, myself, to do it.
25 As I say, from what little Spanish I know I would have some

1 MKP

2 question about it.

3 MR. WEINBERG: The Government's interpreter, Mr.
4 Hoffman, I will have him call Mr. Ras tomorrow, and I am
5 sure this is not a kind of a problem -- I do not see this as
6 an insurmountable problem.

7 THE COURT: Mr. Gotkin, if it cannot be resolved --

8 MR. GOTKIN: Yes, your Honor.

9 THE COURT: -- then I will permit the Government
10 to put on its translator, if it cannot be resolved.

11 MR. GOTKIN: Yes, your Honor.

12 THE COURT: And I will permit you to put on Mr.
13 Ras or anyone else --

14 MR. GOTKIN: Yes.

15 THE COURT: And I will give it to the jury, like
16 any other question on conflicting evidence.

17 MR. GOTKIN: I would rather not highlight it, your
18 Honor.

19 THE COURT: I understand, but we will do everything
20 we can to avoid it.

21 MR. GOTKIN: Yes, your Honor.

22 THE COURT: And Mr. Weinberg is a perfectly reason-
23 able man, and I am sure that Mr. Weinberg is convinced that
24 if there is a better translation, this one will be withdrawn.
25 It should be capable of being resolved, but if it cannot, I

1 MKP

2 won't pass on it. I will give it to the jury.

3 MR. GOTKIN: Yes.

4 THE COURT: All right.

5 MR. GOTKIN: Then there is another one, your Honor,
6 in the same conversation. The Government's translation
7 reads -- it is on Cassette 731. It is a conversation of
8 9/27/76, between Eddy and Rosado, and the Government trans-
9 lation reads:

10 Rosado says, "Yes, but tell me the problem, if you
11 scare me I won't go."

12 The translation by Mr. Ras, our interpreter, is,
13 "Yes, but tell me about the problem, you are getting me
14 scared today."

15 In other words, your Honor, here that is also
16 damaging to us.

17 THE COURT: "If you scare me I won't go".

18 MR. GOTKIN: That is right. That is what Rosado
19 was saying, according to the Government.

20 THE COURT: Yes, and Mr. Ras says that Rosado is
21 saying, "Yes" --

22 MR. GOTKIN: "Yes, but tell me about the problem,
23 you are getting me scared today."

24 THE COURT: "You are getting me scared today."
25 We will deal with that the same way.

1 MKP

2 MR. WEINBERG: The same way, your Honor.

3 MR. GOTKIN: Then the conversation of 9/27/76,

4 I don't see any problem with that. There was another tele-
5 phone conversation -- there were four conversations all
6 together, your Honor.

7 Then the body tape of 9/20/76 -- there is a very
8 innocuous talk between Mr. Rosado and Eddy concerning a ticket
9 on a lottery involving \$5,000. In the context of this case,
10 your Honor, that is also fraught with great danger. It is
11 completely irrelevant, but this talk about it could be inter-
12 preted as being some kind of a pay-off in this case, and it
13 reads -- Rosado is talking -- "Ah, such is life. So what!
14 Let's see if the ticket comes out."

15 Eddy says, "(unintelligible)"

16 "Rosado, "Do you know that my cousin got it
17 (unintelligible) five thousand bucks, kid. Well, see, it
18 came to five hundred. Listen, if I bring (unintelligible)
19 five-hundred, wouldn't you take them? (Background music)

20 "Five-hundred...Ah, no! That's wrong.

21 "JR - See here, five-hundred, five hundred and
22 five-hundred.

23 "E - Five hundred to start with."

24 Now, Judge, it is not clear at all that they are
25 not talking about ATP cards.

1 MKP

2 MR. WEINBERG: Mr. Rosado will be taking the stand,
3 and Mr. Gotkin can question him on that. If Mr. Gotkin's
4 point is that all they are talking about is a lottery ticket
5 then it --

6 MR. GOTKIN: It says "lottery", your Honor.

7 THE COURT: Was Rosado an undercover?

8 MR. WEINBERG: Yes, your Honor; he was cooperating.

9 THE COURT: Well, where it is ambiguous I would be
10 inclined to admit it. Where it is clear that they are talking
11 about a lottery ticket, I would be inclined to exclude it.

12 Is there anything, Mr. Weinberg, where it can be
13 said that they are talking about a lottery ticket?

14 MR. WEINBERG: There is no question, your Honor,
15 that Mr. Rosado says, "Let's see if the ticket comes out."
16 I assume he is talking about the lottery ticket there.

17 It seems to me that is totally innocuous; it is not
18 prejudicial at all to the defendant.

19 THE COURT: Well, do you want it in or out, Mr.
20 Gotkin?

21 MR. GOTKIN: Just that line, Judge?

22 THE COURT: Yes.

23 MR. GOTKIN: Well, if you are going to take every-
24 thing out, I will want that out, but if you are just going
25 to take that out and not the others, I will want that in,

1 MKP

2 because I will have no way of explaining it, Judge.

3 THE COURT: All right; I will let it in.

4 MR. GOTKIN: So you are not taking the rest out,
5 Judge? ✓

6 THE COURT: No.

7 MR. GOTKIN: Now, what about the obsceneties, your
8 Honor? Are you going to leave them in?

9 MR. WEINBERG: I was going to raise that with the
10 Court.

11 THE COURT: I would be inclined to take them out.

12 MR. GOTKIN: People talk like that -- some people
13 do

14 THE COURT: I know. If it were in English there
15 would be no way of dealing with it, because the tape itself
16 is the real evidence, but I see no reason, if both sides
17 are agreed, why we should not delete that.

18 MR. WEINBERG: The Government has no problem with
19 that.

20 THE COURT: All right. Why don't you, in preparing
21 what is to go to the jury, take it out?

22 MR. GOTKIN: Will Mr. Weinberg prepare a redacted
23 transcript?

24 THE COURT: Oh, yes.

25 MR. WEINBERG: Your Honor, I will offer, through

1 MKP

2 the interpreter, the original transcript so that he can testify
3 that it is an accurate translation of the conversation.

4 THE COURT: Yes.

5 MR. WEINBERG: And I will also offer the redacted
6 version.

7 THE COURT: Well, we can mark the original simply
8 for identification.

9 MR. WEINBERG: Fine, your Honor. Then I will offer
10 the redacted version.

11 THE COURT: I will admit that, and that will be the
12 only thing that goes to the jury to see. What is received
13 in evidence I must submit to the jury.

14 All right. We have solved that problem.

15 MR. GOTKIN: We have covered the last tape and the
16 first one. That is the one of 9/27/76. I think that's it
17 on the tapes, your Honor.

18 THE COURT: All right.

19 MR. GOTKIN: I would like your Honor to review
20 later what my argument on the money orders is, because I
21 think that --

22 THE COURT: No.

23 MR. GOTKIN: -- because I think that it is going
24 to be so prejudicial, I do not see how he is going to get a
25 fair trial because of that, your Honor.

1 MKP

2 THE COURT: No; I think it is admissible. As I
3 said, I will explain to the jury why. All right. It is a
4 hopeful way to solve the Spanish problem between the two
5 Spanish experts, and if you cannot, I have indicated what I
6 will do about it.

7 MR. GOTKIN: Thank you.

8 THE COURT: Thank you, gentlemen

9 - - -

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

GOVERNMENT EXHIBIT 8(b) TRANSCRIPT OF BODY
RECORDING OF SEPTEMBER 27, 1976 (pp. 125a-129a)

Gx 8(4)

125a

FILE NO. 770.

Date: Monday, September 27, 1976

Time: 12:15 p.m.

Place: Check-casher's office

Rosado - (humming a song to himself. Traffic Noises)
(Buzzer sound)

Rosado - Mister Eddy how are you!

Eddy - How are things?, look

Rosado - Fine
(Music can be heard in the background
Noises. Pause)

Eddy - And what am I going to say to Modesto?

Rosado - About what?

Eddy - About this

Rosado - Tell him you don't know who it was

Eddy - But how...(unintelligible)

Rosado - But of course!

Eddy - (unintelligible)

Rosado - Of course....Give me one hundred bills

Eddy - You are. No, no, no, no big bills because
I know who it was. They left---they left
from here---they are.

Eddy - (unintelligible)
(Pause. Music in the background)
Are you taking one hundreds?

Rosado - Yes

Eddy - Then

Rosado - Then don't--don't--don't

Eddy - (unintelligible)---the photostatic copy---
(unintelligible)---because they were blank
when they left this office

Rosado - ~~12065~~ They were erased

Eddy - Huh? No. The checks were not erased. Then, if
they were blank when they left here, I have to
know who took them

Rosado - But don't put it this way---that you sold them,
that you don't know anything else

Eddy - They were not erased.

Rosado - You say that you don't know nothing, that you--- that they were sold, brother, that you know that they were sold, nothing else. You give them the story, that's it. Nothing else. You tell them the story. They were sold. They were sold here. Your explain to them the whole story and nothing else, and you stick to your story.

*Money
orders*

Eddy - All right, they were sold.

Rosado - You tell them the story. Give me one hundred bills.

Eddy - (cutting in) for what value were the checks?

Rosado - Of two dollars.

Eddy - Well then they are not erased.

Rosado - They erased them very carefully. The ones who did the job specialize in that, and nobody will notice.

Eddy - You have to count your money.

Rosado - No, its no good so much counting, man (unintelligible) Papi, here you have---you wanted---11.000, 2.000, 4.000, 6.000, 8.000, 9.000, 10.000, 11.000 five hundred. 1,2,3,4,5,6,7,8,9,10,11,12,13,14, 15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31, 32,33,34,35, three thousand five hundred, three thousand...

Eddy - *Money
orders* (cutting in) ..look, because if they questioned me, I'll speak

Rosado - *Money
orders* I'm the one...(unintelligible)...that's it. Eddy, it's simple. Nobody is going to question you. You don't know anything. You sold that and that's it--that's it 1,2,3,4,5,6,7,8,9,10--1,2,3,4,5,6,7,8,9,10-- 1,2,3,4,5,6,7,8,9,10---three hundred--three hundred and sixty, see? Ah! this bill is falling apart. Don't worry Eddy. 1,2,3,4,5,6,7,8,9 and give me that one, Eddy, and here is that one hundred bill. Listen, the bank gave me this bill. It's very bad. That one hundred bill it's unbelievable!

Rosado - All right, your word is like gold
(Music in the background)

Eddy (contd.) - send me an investigator over here

Rosado - (unintelligible)...you say that they were sold and that's it, and you tell them a story: they were sold like that and you don't know anything. They were sold

Eddy - (unintelligible)-----one hundred dollars

Rosado - (unintelligible)---to throw it away or something, anything

Eddy - (unintelligible)

Rosado - huh?

Eddy - (unintelligible)---the money orders
(Music in the background)

Eddy - they are going to say that I'm missing some money orders and then they are going to investigate me and then---

Rosado - (cutting in) You are going to give them a story and you stick, you stick, you stick, you stick, you stick to it. That's it. You tell them it's the truth and then stick to your story, stick to your story, stick to your story, stick to your story

Eddy - the others, the others are going to charge me \$800

Rosado - who?

Eddy - the others

Rosado - why?. But don't you understand this thing? I'm telling you

Eddy - Mo is not going to agree to pay 800 dollars

Rosado - of course not! to nobody. Nothing is going to happen, nothing will happen. I know this for sure, that's why they sent it back

Eddy - huh?

Rosado - they sent it back, all the ones that I registered there

Eddy - they sent it----they left from here

Rosado - they were all erased. Then---you are alone today also. I'm going to see Modesto at the hospital. That's why I'm going to see him right now. I'm see if I can go see him today----he's out there? at the house?

Eddy - do you want this?

Rosado - huh?

Eddy - do you want this?

Rosado - ah!, so much the better

Eddy - (unintelligible)---I don't--I don't--I don't want to know anything

MONEY
ORDERS

Rosado - stick to your story and that's all
 Eddy - (unintelligible)
 Rosado - if you don't say anything about it
 Eddy - if you don't say anything--that you have sold them,
 nothing is going to happen if you stick to your
 story. That's all. They were sold like that, that
 (unintelligible)
 (Music in the background. Short pause)
 Rosado - is this mine?. It's all right.
 (Voices, in English, can be heard in the background)
 Rosado - how many coupons are there?
 (Pause)
 Eddy - (unintelligible)
 Rosado - are you looking at her?
 (Noises. Music.)
 Eddy - it's bad
 Rosado - it's nothing---a story. I understand
 Eddy - when Mo finds out---
 Rosado - they were sold like that. That's all. Like that,
 like that, they were sold like that. They were
 erased and I don't know anything. They were erased.
 You go ahead. I don't know anything about it---
 It wouldn't be the first time.
 Here you are, these 40 dollars that I have here
 so you can take care of yourself. It's \$40 because
 things are bad
 (Voices, in English, can be heard in the background)
 Eddy - he does the same thing everytime he comes here
 Rosado - I have twenty thousand five hundred (unintelligible)
 look, today I'm giving you extra, I have extra ones
 for you. I am giving you 360 dollars and it should
 be 36 dollars.---10, 20, 30....that bill is to
 change. I'm missing one here...(unintelligible)
 It's eleven thousand thirty six and I gave you
 eleven thousand three hundred and sixty....here
 (Pause. Music. Noises. Coughs)
 Rosado ^{Mr. Tel} ~~over~~ would you forget about it! Don't be scared
 Give me mine, I'm going
 Eddy - aren't you going to stay?
 Rosado - no because I---I have to keep going at my own pace
 and if I stayed I'd be delayed
 (Short pause. Music)
 Rosado - give me mine, I'm going. Bring those 20,000 over
 here
 Eddy ^{Money} ~~over~~ (unintelligible)---I know nothing, eh?
 Look at all these bills my friend

- (Sounds like of paper being handled)
Rosado - count
Eddy - (unintelligible)
Rosado - (laughs)...No!count slowly, there have to be
-----count the packages
Eddy - 6,8,9,10,11
Rosado - -----36, ok?
Eddy - right
Rosado - take it easy. Don't worry
Eddy - huh?
Rosado - forget it. Easy, easy, easy and...it's always
the same thing. That's all. I'll see you.
Take care.

(Traffic noises)

723

My name is Jose Hernandez. Today is September 27, 1976. Time: ten fifty. I'm calling 723 Bruck (?) Avenue, the carrier. The phone number is seven nine eight, five seven six two. I am making this telephone call voluntary.

(touch-tone dialing, ringing sound)

Dadie

JR Dadie!

E Yes...

JR Habla el huevero.

E Mira...

JR Que te pasa - ¿higo?

E Acabo de ir a un acc, que tienes un problema del carro.

JR Cual es el problema?

E Mhm! Bughicho..

JR Mhm.

E Estoy preso y no lo sabes.

JR ¿Porque?

E Usted viene y lea hoy?

JR Si, pero dime el problema, si me esta metiendo miedo no voy.

Dadie

JR Dadie!

E Yes...

JR This is the egg seller.

E Look...

JR What's up with you, my son?

E I just arrived here, where you have a problem.

JR What's the problem?

E Mhm! Dey....

JR Tell me.

E You're in jail and you don't know it.

JR Why?

E Are you coming here today?

JR Yes, but tell me the problem, if you scare me I won't go.

Gx 7(b)

GOVERNMENT EXHIBIT 7(b) TRANSCRIPT OF PHONE RECORDING
OF SEPTEMBER 27, 1976
(pp. 130a-132a) 130a

Money
ORDER

E. Ahh.Entonces,otra cosatu te acuer-
das de los money orders que tu hiciste
aqui?

JR Si.

E Ah,muchacho, que problema.del carajo...

JR Eso olvidate.

E Como que se olvida?

JR Hmmm.

E Me estan investigando ahi.

JR Pero,y eso?...eso no...Eso olvidate.

E Porque?

JR Porque si.

E Pere si tienen los money orders en la
mano.

JR Esta bien, OK. No hay problema.

E. Ahh. Then, the other thing...do you
remember the money orders that you
prepared here?

JR Yes.

E Ah, boy, what a problem...

JR Forget about that.

E How's that that it'll be forgotten?

JR Hmmm.

E I'm being investigated thre.

JR But, and that?...not that...Forget it

E Why?

JR Just because.

E But if they have the money orders in
their hands.

JR All right, OK. No problem.

E Ah?
JR Buscas las tarjetas?
E Como que buscas las tarjetas?
JR Que...que...laca...las...los cupones, estan
preparadas?
E Si, estan preparados hacen horas.
JR OK, voy p'alla a buscarlos, ahorita.
E Iero ven enseguida.
JR Si.
E OK.
JR OK, te veo.
E OK.
JR Bye.

(Fin de la conversacion)

E Ah?
JR Are you looking for the cards?
E What's that of looking for the cards?
JR That...that...the...the...the coupons,
are they ready?
E Yes, the've been ready for hours.
JR OK, I'm coming over to pick them up right
away.
E But come quickly
JR Yes.
E OK.
JR OK, I'll see you.
E OK.
JR Bye.

(End of conversation)

EXCERPTS FROM TRIAL TRANSCRIPT

* * *

(pp. 133a-142a) 163

Rosado-direct

mp9

1 purchase cards you had given to Mr. Torrez?

2 A About 300 cards.

3 Q Mr. Rosado, besides giving to Mr. Torrez
4 the cash value for the food stamps, did you give him
5 anything else?
6

7 A I gave him a little tip.

8 Q How money did you give him?

9 A I don't remember. It was 10 or 20 dollars.

10 Q At the time that you brought the authorization
11 to purchase cards to Mr. Torrez, around that time, did
12 you also meet with Mr. Perez?

13 A Yes.

14 Q Where did that meeting take place?

15 A 158 and Broadway.

16 Q Did you give Mr. Perez anything?

17 A ATP cards.

18 Q Do you recall the number?

19 A Three or four hundred.

20 Q Did you give Mr. Perez anything else besides
21 the three or four hundred authorization to purchase cards?

22 A The money.

23 Q What money?

24 A He added them up; the money.

25 Q The cash value of it?

* * *

mp

Rosado-direct

222

1 A I walked inside the cashier and he told me
2 how much I am supposed to give him and he gave me some
3 coupons. I didn't give him the money.
4

5 Q You didn't have any money?

6 A I didn't have any money. I told him I
7 talked to Modesta already. So we let it go at that.
8 He gave me some coupons.

9 Q Do you recall the amount of coupons he gave
10 you?

11 A I believe he gave me around \$30,000.

12 Q Did he tell you that was the amount he was
13 giving you?

14 A Yes.

15 Q Mr. Rosado, what did you do with the food stamp
16 coupons that Mr. Perez had given to you?

17 A I gave it to Mr. Burke.

18 Q Let me direct your attention to Monday,
19 September 27, 1976. Did you have a phone conversation
20 with Mr. Eddie Torres?

21 A Yes.

22 Q Did you call him or did he call you?

23 A He called my house.

24 Q He called your house?

25 A Right.

mp

Rosado-direct

223

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Did you speak with him?

A No, my wife did, and I called my wife and she told me he called and I called him at the cashier right away.

Q Was the phone that you called him from equipped with a recording device?

A Yes.

Q Will you please tell us what you said to Eddie Torrez and what Eddie Torrez said to you?

A Well, I called Eddie right away and he told me I was with problems, I was in jail already. That was his words. I asked him why. He said the money orders. I told him I would be there in a little while.

MR. GOTKIN: I object to this and I stand behind the motions made at the hearing before trial. I renew my objections.

THE COURT: I overrule them.

Q Mr. Rosado, you mentioned money orders. Prior to this conversation with Eddie Torrez did you purchase a money order from him?

A Yes.

Q Please describe when this took place.

A A few cycles before.

Q Did you have a conversation with Mr. Torrez

mp

1 about the money orders?

2 A Yes.

3 Q Please tell us what you said to Mr. Torres
4 and what he said to you.

5 A I wanted the money orders blank.

6 Q You want to buy blank money orders?

7 A Right, and we pay \$2 for it and I give him
8 \$10 extra.

9 Q And did Mr. Torres do that?

10 A Yes, he did.

11 Q What, if anything, did you then do with the
12 blank money order?

13 A I sold it.

14 Q How much did you sell it for?

15 A 40, 50 dollars.

16 Q Now, let us go back to the phone conver-
17 sation you had with Mr. Eddie Torres on Monday, September
18 27, 1976. Please tell us the conversation, what Mr.
19 Torres said and what you said.

20 A I called him on Monday and I asked him how
21 much was the amount I was supposed to bring him. He told
22 me to bring down \$11,360.

23 MR. GOTKIN: What was that date again?

24 MR. WEINBERG: September 27.

25 * * *

1 tpl

* * *

4A

2

3

4

5

6

7

8

9

We also know from Mr. Rivera's testimony that he actually told Mr. Torrez that he had obtained cards that were stolen. We know from Mr. Rivera's testimony that Mr. Torrez was getting \$3 a card for each card he was redeeming. And we know from Mr. Rosado's testimony that he was giving, certainly in the latter months, 30 and 40 dollars each time he went to see Mr. Perez and Mr. Torrez.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

If Mr. Torrez and Mr. Perez thought they were doing something that wasn't illegal, why were they taking -- why would they be given 30 and 40 dollars each time for the services they were performing for Mr. Rosado?

You also heard testimony which shows something about Mr. Torrez's knowledge, his intent and what he did. You heard testimony that Mr. Torrez was not new to this scheme of trying to get money illegally through the use of things like ATP cards --

MR. GOTKIN: Objection, your Honor.

Can we approach the side bar?

I don't like to interrupt, your Honor.

THE COURT: All right.

(At the side bar.)

MR. GOTKIN: Your Honor, if I am not mistaken,

I think Mr. Weinberg is going on with the money order

1 tp2

2 business now, and I would think that is highly ob-
3 jectionable, your Honor.

4 MR.WEINBERG: It is already in evidence,
5 your Honor. I can argue it shows intent.

6 MR. GOTKIN: To harp on that -- I know you
7 permitted it in, but to harp on that in summation I think
8 is unfair.

9 THE COURT: As long as he doesn't argue that
10 it is evidence of a general bad character on the part of the
11 defendant, I have got to permit him to do it.

12 He can argue that it shows his intent, and that
13 is what I am going to charge the jury.

14 MR. GOTKIN: Your Honor, again --

15 THE COURT: I assume that is going to be your
16 argument.

17 MR. WEINBERG: That is my argument. I am not
18 going to harp on it.

19 THE COURT: I am going to overrule the ob-
20 jection.

21 MR. GOTKIN: I except respectfully, your
22 Honor.

23 (In open court.)

24 THE COURT: All right, Mr. Weinberg, you may
25 continue.

139a

tp3

1
2 MR. WEINBERG: Let me just spend one brief
3 moment on this thing about the money orders, because
4 I think it shows something about Mr. Torrez's intent
5 and his knowledge.

6 You heard some testimony, and it is
7 corroborated by the tape transcripts, I believe it is
8 Government's Exhibits 7-B and 7-C, that Mr. Torrez had
9 sold to Mr. Rosado a blank money for about -- blank
10 money orders for about \$10 a money order.

11 Mr. Rosado would then sell that money order
12 and make a profit. Mr. Torrez would put down on his
13 records that that money order was sold for \$2 and Mr.
14 Torrez made a dollar profit on that transaction.

15 Now, I ask you to consider that testimony,
16 ladies and gentlemen, only in evaluating Mr. Torrez's
17 arguments that what he was doing with these ATP cards
18 he didn't know anything was wrong, that he didn't know
19 that Mr. Rosado had obtained these ATP cards in an unlawful
20 manner.

21 You are about to hear closing arguments from
22 Mr. Gotkin and Mr. Shaw and then I will have an opportunity
23 to address you briefly in a rebuttal argument.

24 As you listen to Mr. Gotkin and Mr. Shaw,
25 try not to let them throw irrelevant issues into this

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

tp4

business, red herrings.

MR. GOTKIN: I object to that. I object to
red herri our Honor.

COURT: Overruled.

MR. WEINBERG: See how they try to explain to
you how on a regular basis their clients were receiving
hundreds upon hundreds of authorization to purchase cards,
how they were dispensing \$20,000 worth of food stamp
coupons at one time to one individual, Mr. Rosado, and
yet somehow they were naive individuals, who didn't know
know what they were doing.

Don't, don't let Mr. Gotkin or Mr. Shaw
convince you that their clients were naive and not
familiar with what they were doing, because the fact
remains that they knowingly participated in this scheme,
they benefited from the scheme, and without their
participation this scheme could never have succeeded.

Thank you.

THE COURT: Mr. Gotkin, would you address the
jury.

* * *

tp

* * *

to that verdict. That is your verdict. No one can object or question that verdict.

Are you going to believe a man, Mr. Rosado, who admitted to you that he used children, 10, 11 and 12-year-old children, to forge names on the back of ATP cards?

I say to you, ladies and gentlemen, if you believe the testimony of that man, if you convict my client on the testimony of the likes of a Rosado, I say that is sickening. That is absolutely sickening, when a man, when a human being, can take children, including his own children, and pay them money to forge names on these cards, on these authorization to purchase cards.

Do you think for one moment a man like that, a man who would stoop to something like that, would hesitate for one moment to come in to this court and lie to you? Do you honestly believe that?

Do you believe a man so cynical puts on a tape recorder, goes into the check-cashing place and tries to create conversations concerning money orders, which I submit to you, ladies and gentlemen, hasn't got a thing to do with this case, for the sole purpose of trying to incriminate Mr. Torrez, do you think that kind

1 tp

2 of individual would hesitate for one moment to come into
3 this courtroom and lie and lie and lie so he can save
4 his own skin in the hopes of getting probation or a
5 light sentence when he was faced with 40 years and
6 thousands of dollars in fines?

7 There is not a scintilla of evidence in this
8 case that Eddie Torrez did anything wrong.

9 * * *

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

COURT OF APPEALS
SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

- against -

ISHMAEL SUAREZ-TORREZ, a/k/a "Eddie",
Defendant-Appellant.

From a Judgment of Conviction of the U.S. Dist.
Court for the Southern District of N.Y.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

SS.:

I, Reuben A. Shearer, being duly sworn, depose and say that deponent is not a party to the action,
is over 18 years of age and resides at 211 West 144th Street, New York, New York 10030.

That on the 23 day of June, 19 77 at One St. Andrews Plaza
New York, New York

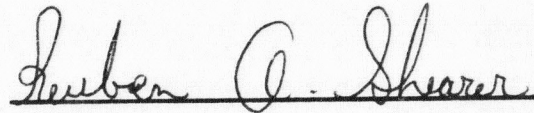
deponent served the annexed

Appendix

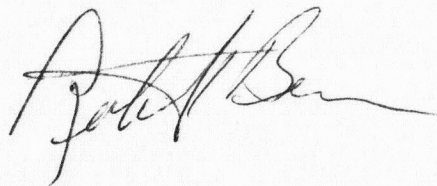
U.S. Attorney-Southern District ^{upon}
Robert Jiske, Jr.

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 23
day of June, 19 77



Reuben A. Shearer



ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1979